



LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

PORTUGAL

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GENERAL INFORMATION ON MIGRATION



MAIN FIGURES AND TRENDS

Portugal, probably due to its geographical location, has remained outside the major migratory flows associated with global conflicts or the social, political and economic instabilities that have affected the countries of the Mediterranean basin.

Thus, the majority of migrants entering Portugal come through Lisbon airport and are African and South American citizens in transit, through out the country, with final destination to other European Union States.

In 2022, there was a significant increase of the use of forged documents in airport departures, with an 123% increase of detentions for this reason, when compared to figures of 2021.

There has also been a large increase of unfounded requests for international protection. In fact, once migrants enter Portuguese territory, they do not follow up their own requests and their whereabouts in Portugal becomes unknown.

With regard to secondary movements resulting from migration flows from other European countries, Portugal welcomes thousands of immigrants of various nationalities, who come to the national territory only to (falsely) regularise their documental situation or to obtain forged documents that will allow them to travel to different European countries and even to the USA.

There is thus a great proliferation of criminal groups willing to facilitate the movement and transportation of citizens from third countries, often already residing illegally in EU countries, whose sole aim is to obtain documents that will allow them to stay in Portugal and circulate throughout the EU.

There have also been countless cases of fraudulent acquisition of Portuguese nationality by citizens purporting to be descendants of nationals from the former Portuguese territories of Goa, Daman and Diu in India.

The phenomenon is no longer limited to citizens of India, but has spread to nationals of Bangladesh, Pakistan, the United Arab Emirates and Tanzania, who have used supposedly Indian documentation (from the former Portuguese territories) in an attempt to obtain Portuguese nationality.



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MIGRATORY ROUTES

The major migration routes of migrants entering Portugal take place by plane and generally come from:

- South America - mostly Brazil, but also Colombia.
- Africa - generally from Portuguese-speaking countries such as Cape Verde, Angola, Guinea-Bissau, Mozambique, but also from Nigeria and Senegal.
- Asia – India, Pakistan and China.

By land, migrants come very often from Eastern Europe - Ukraine, Moldova.



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INSTITUTIONAL ORGANISATION

The Foreign Nationals and Borders Service (**SEF**) was the law enforcement authority who dealt with every aspect of migrant smuggling (covering both criminal investigations and the administrative issuing of residence permits as well as deciding asylum requests). It was extinguished very recently, on 29 October 2023.

As a result, the Portuguese border control system, as well as the legal regime of the police forces and services that work in the field of migration, were completely restructured.

Agency for Integration, Migration and Asylum (AIMA)

AIMA was created by Law 73/2021 of 12 November. It will be responsible for regularising the entry and stay of foreign citizens in national territory, granting extensions of stay, residence permits, renewals of residence permits, etc.

Criminal Investigation Police (Polícia Judiciária - PJ)

Criminal investigations in the field of illegal migration, smuggling of migrants and trafficking in human beings are now the responsibility of the Criminal Investigation Police (Polícia Judiciária - PJ) by Law 23/2007, as amended by Law 56/2023 of 6 October;

Unit for the Coordination of Borders and Foreigners (UCFE)

This unit will be responsible for coordinating the actions of police forces and services with regard to the many aspects of border control, the Schengen Information System (SIS) or international police cooperation, as well as coordinating with the Agency for Integration, Migration and Asylum (Law 53/2008 of 29 August, article 23 B).



LEGISLATIVE FRAMEWORK

Law 23/2007 (entry, stay, exit and removal of foreigners from national territory)

The main national framework regarding migrant smuggling is provided by Law 23/2007 of 4 July, that rules the entry, stay, exit and removal of foreigners from national territory.

Article 183 of the said Law states that anyone **who favours or facilitates**, in any way, the illegal entry or transit of a foreign national into national territory shall be punished with imprisonment of up to three years, or, if this action is made with **a profit intention** the punishment will be one to five years imprisonment.

It has been considered by Portuguese jurisprudence that although the offence does not require that the migrant arrives at the specific place of destination agreed with the perpetrator, or that the Portuguese authorities accept the migrant into their territory, the criminal type does include the actual introduction of the foreigner into Portugal.



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If the perpetrator facilitates or favours the entry, transit or stay of the foreigner in national territory, but the entry doesn't take place, there is only an attempt.

The other criminal offences also provided in the same Law are criminal association to aid illegal immigration, under Article 184, and marriages of convenience under Article 186.

Article 186 states that anyone who enters into a marriage or unmarried partnership for the sole purpose of obtaining a visa, a residence permit or "EU Blue Card", or defrauding the legislation in force on the acquisition of nationality, shall be punished with imprisonment of one to five years. If this action is provided in an organised manner, the offence will be punished from two to six years imprisonment.

Finally, Article 185-A of the same Law punishes the repeated use of labour of (a) foreign citizen(s) in an illegal situation. The legal frame of the punishment is up to one or two years imprisonment.



JUDICIAL FRAMEWORK

The Code of Criminal Procedure provides for a mandatory investigative phase ("*enquiry*") led by a public prosecutor, who may delegate its investigative powers to the criminal police. During this phase, the intervention of the investigative judge is only foreseen for intrusive or coercive measures such as phone wiretaps, home searches or provisional arrest of suspects (so the investigative judge is basically the "*Juge des garanties or des libertés*").

The second phase of the criminal proceedings ("*instrução*") is optional. It can be requested by the defendant, when the prosecutor decides to indict, or by the victims, if the Prosecutor decides not to indict anyone and closes the file.

The final phase is the trial, that is always under the direction of a single judge or a panel of judges.

Migrant smuggling, as any other criminal offence, will be investigated by the competent Prosecutor, assisted by the criminal police.

There are three main departments involved in the investigative phase:

- at a national level, the **Central Department for Criminal Investigation and Prosecution** (DCIAP) has competence for the investigation and prosecution of serious, organised, economic and financial crimes ;
- The **Regional Departments for Criminal Investigation and Prosecution** (Regional DIAPs) of Porto, Coimbra, Lisbon and Évora, have the same competence as the DCIAP, but on a regional level ; and
- the **local DIAPs** have competence for all crimes, and are divided into general or specialised units.



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INTERNATIONAL COOPERATION

Portugal is a Member State of the EU, of CoE, OSCE, UN and other regional organisations as the Portuguese Speaking Countries Community and COMJIB – Conference of ministers of Justice of Ibero-American Countries, as well as a party to the United Nations Convention against Transnational Organized Crime and many other international legal instruments that can be applied in the field of smuggling of migrants.

Portugal transposed the EU Directive 2014/41/EU on the European Investigation Order (EIO) and is also bound by FD 2002/465/JHA on joint investigation teams.

Specifically, in what concerns the settlement of Joint Investigation Teams (JITs), although under the internal judicial cooperation law the setting up of JITs is limited to EU Member States, Third States may reach an agreement to setup a with JIT with Portugal, under the scope of multilateral conventions, such the UN Convention against Transnational Organized Crime, or the 2nd Additional Protocol to the 1959 Convention on Judicial Cooperation of the CoE.

Portugal participates in several judicial cooperation networks, having designated contact points in European Judicial Network (EJN), IberRed, Network Portuguese-Speaking Countries Community (Brazil, Cape Verde, Angola, Guinea-Bissau, Mozambique, São Tomé and Príncipe, and East Timor), and also in EU Projects and Groups, such as the Focus Group on Migration (Eurojust) and the EUROMED Justice Program (a program implemented by Eurojust that develops judicial cooperation in criminal matters between EU Member States (EU MS), and the South Partner Countries (SPCs) – Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine and Tunisia).



RELEVANT CASES

- ❖ **Case 1** - Matter regarding organised sham marriages that occurred in Portugal and in other EU countries (namely Denmark). The criminal organisation had members residing in the United Kingdom, France and Portugal, and its main objective was to enable individuals from non-EU countries, mainly from Pakistan (French branch of the organisation) and Nigeria (British branch of the organisation), to regularise their stay in Europe, by promoting marriages with Portuguese citizens, all in return for the payment of large sums of money.

The process would begin with the recruitment of young girls from the greater Lisbon area and the south bank, usually from deprived areas, with economic difficulties, who were easily persuaded to accept marrying an unknown individual, in exchange for money.

The organization also provided for the forgery of other documents that would prove a life together between the Portuguese women and the migrants to the authorities in charge of issuing resident permits to the migrants.

COUNTRY FACTSHEET* – Smuggling of migrants



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These documents were therefore false, since the Portuguese women who had been recruited actually lived and worked in Portugal, and had no relationship with the people they had married, and did not live in the same European country as the latter.

This whole process required coordination and close contact between all the members of the criminal network, particularly regarding the numerous trips made by Portuguese women to the countries where they had married and/or where third-country nationals wanted to regularise their stay. A JIT was set up between Portugal, France, and the United Kingdom, with several European Arrest Warrants (EAWs) being issued and executed and a joint day of action being held, as well as several coordination meetings at Eurojust.

- ❖ **Case 2** - Matter regarding an illegal smuggling network that transported migrants in “convoys” of dozens of private cars, travelling from the Bordeaux area (France) or Italy to Lisbon (Portugal) on a weekly basis, to buy forged documents and residence permits in Portugal.

The network was composed by drivers of Pakistani origin, living in Germany, Italy, and France. It was ascertained that more than 400 citizens acquired Portuguese forged documents by this via. Several coordination meetings took place between France and Portugal, there was a common action day where 20 suspects were arrested both in Portugal and France, with Europol and Eurojust assistance.

- ❖ **Case 3** - Matter regarding a criminal organisation whose members were Portuguese and Indian nationals, with the aim of processing applications for Portuguese nationality from Indian nationals, using forged documents and obtaining large sums of money in return. The organisation’s operational base was in Portugal, in the United Kingdom, India, Guinea-Bissau, Senegal and São Tomé and Príncipe.

The activity carried out by the organisation was complex, involving the recruitment of clients resident in India or born in India but living irregularly in the United Kingdom, that were willing to pay large sums of money in order to obtain Portuguese nationality, after an apparently legal, but materially illicit process for granting nationality.

The organisation developed a system of forging official Indian documents as part of the administrative procedures for granting nationality in Portugal. These documents were forged in India, by forgers who operated in that country. The documents were sent to the criminal organisers in Lisbon or in the United Kingdom, who received them and acted as “proxies” for the Indian citizens who were applying for nationality. The Portuguese nationality would be granted based on those forged documents and then, a legitimate ID or Portuguese passport would be issued.

The migrants boarded flights to the destinations where they intended to live, mainly in the UK, displaying “legitimate” Portuguese documents.

Thus, by hiring the services of the organisation, these immigrants were allowed, at the very least, to move and reside freely throughout Europe (the facts happened before Brexit).

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Several requests for judicial co-operation were issued and executed by UK authorities, including house and non-house searches, as well as EAWs and issuing Red Notices via Interpol.

The suspects were tried and sentenced to 1-6 years in prison for the offences of forgery of documents and association to facilitate illegal immigration.