



*Missão Permanente de Portugal
junto do
Conselho da Europa*

Nº 21

Strasbourg, March 22, 2021

Subject: Platform for the Protection of Journalism and Safety of Journalists | Alert submitted regarding Portugal

Dear Mr. Matjaž Gruden,

I have the honour to follow-up on my letter dated January 21st.

On a general note, let me stress that the Portuguese Constitution and ordinary laws establish very strong safeguards concerning the freedom of expression and the freedom of the media.

In particular, article 38§2 of the Constitution establishes that freedom of the press implies “*freedom of expression and creativity on the part of journalists and the other staff*” and states that “*journalists have the right, as laid down by law, of access to sources of information, and to the protection of professional independence and secrecy, as well as the right to elect editorial boards*”.

These provisions are reinforced *inter alia* by Law nº 1/99 and Law nº 2/99. Article 11 on the former states specifically that journalists “*cannot be made to reveal their sources, nor can their silence give rise to any sort of penalty*”. This rule may be waived within the context of a given criminal proceeding, but only if a court rules that the specific and very strict standards laid out therein are met. Searches in the premises of media organizations can only be conducted by a judge, in the presence of a union official, and any material that allows for the identification of a source can only be accepted as evidence if professional secrecy is effectively lifted by a court.

Regarding the allegations that are the object of the alert submitted on the Platform for the Protection of Journalism and Safety of Journalists on January 14th, allow me to recall that article 219 of the Portuguese Constitution enshrines the autonomy of the Public Prosecution Service (PPS)¹. As such, the Portuguese Government cannot interfere in, or review, its actions.

Article 32§4 of the Constitution states that *“A judge shall have jurisdiction over all investigative proceedings, and may, as laid down by law, delegate the practice of such acts that do not directly concern fundamental rights to other entities.”*

In response to the present allegations, however, the Department of Criminal Investigation and Prosecution in Lisbon has denied any wrongdoing, claiming that the actions at stake need not have previously approved by a judge, and that the investigation was conducted in full compliance with the law.

Still, in the wake of the allegations, an investigation into the matter was immediately launched by the Prosecutor-General’s Office, with a view to ascertain whether the actions of the public prosecutor who ordered the surveillance were taken in violation of the law.

The result of that investigation will be examined by the High Council of the PPS, which is its disciplinary body.

At the same time, I would like to underline that Portuguese Law allows the affected journalists to challenge the lawfulness of such actions and the value of the evidences obtained through the surveillance before an independent court.

One of them has already filed a criminal complaint against the public prosecutor and the police officers involved.

Allow me also to assure you that the Portuguese Government trusts that these proceedings will be conducted in a timely and impartial manner.

¹ “The Public Prosecution Service shall have its own statute and autonomy, as laid down by law.” See also Article 3 of the PPS Statute (Law nº 68/2019), which states that the PPS is “autonomous with respect to the organs of central, regional and local government“, which means that the PPS “is guided by criteria of legality and objectivity“, and that “public prosecutors are only bound by the guidelines, orders and instructions foreseen in this Statute”.

From my part, you can be assured also that we will keep you informed of their course.

Let me conclude by reaffirming Portugal's longstanding commitment to promoting the freedom of the media and ensuring the safety of journalists, which can be attested by the fact that my country was ranked 10th out of 180 in Reporters Without Border's 2020 World Press Freedom Index.

We are proud of this achievement. Still, we are determined to remain vigilant and improve the response to any potential threat, in Portugal and around the globe.

For this reason, I am glad to inform you that Portugal has been admitted on March 16th to the Media Freedom Coalition.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gilberto Jerónimo', with a stylized flourish at the end.

Gilberto Jerónimo

Ambassador

Permanent Representative

Matjaž Gruden

Director of Democratic Participation

Directorate General of Democracy

Council of Europe