

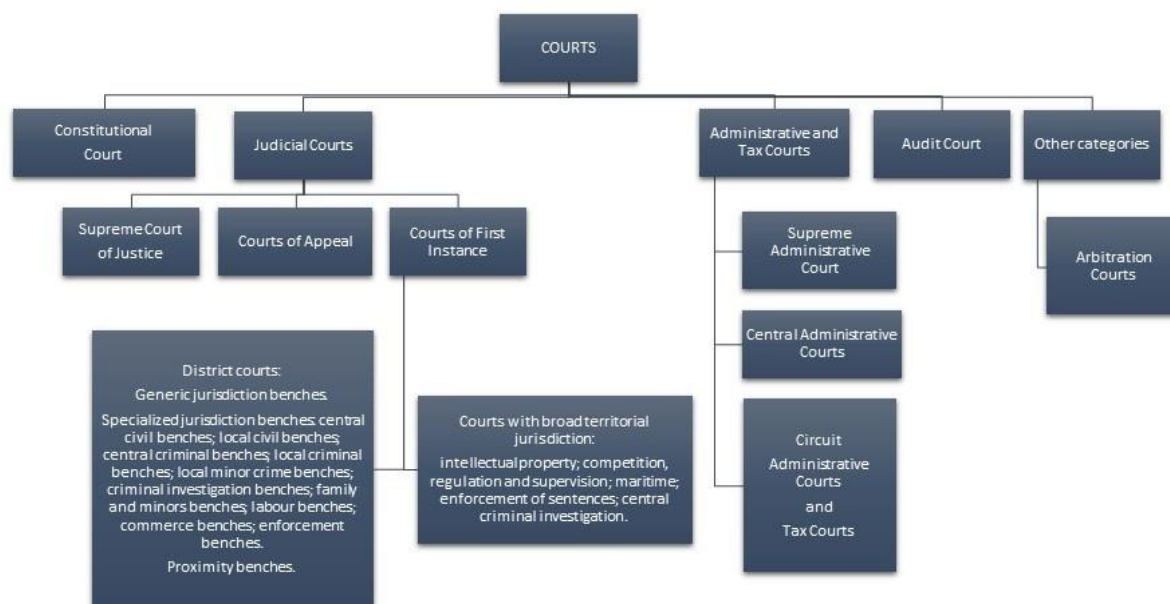
Annex A. The national court system in Portugal

The organisation of the court system

The constitution of Portugal establishes the organisation of the Portuguese courts and divides it into two different jurisdictions: the judicial courts and the administrative and fiscal courts. The constitution also makes provisions regarding the Constitutional Court, the Audit Court, the arbitration tribunals, the justice of the peace courts and conflict courts (Figure A.1):

- The *judicial courts* are common courts which deal with civil and criminal issues, with jurisdiction in all matters not allocated to other judicial bodies.
- The *administrative and tax courts* are competent to settle disputes arising out of administrative and tax legal relations.
- The *Audit Court* is the body with authority to scrutinise the legality of public expenditure.
- The *Constitutional Court* is the body entrusted specifically with the administration of justice in matters of a legal-constitutional nature.
- The *Conflict Court* settles jurisdictional conflicts between judicial and administrative courts.¹
- The *arbitration centres* are mainly private entities.
- The *peace courts* are competent to decide on those actions with values that does not exceed EUR 15 000.

Figure A.1. The organisation of the judiciary in Portugal



Source: Provided by the Ministry of Justice of Portugal, 2019

The national territory is divided into 23 judicial demarcations (*comarcas*), which correspond to the administrative districts. Each judicial demarcation comprises multiple municipalities. The central units of the demarcation courts have competency in the entire territory of the judicial county or for a larger group of municipalities. The local units, on the other hand, have competency for one or a small group of municipalities within the judicial demarcation.

Under Articles 209 *et seq.* of its constitution, Portugal has two separate sets of courts – the civil courts and the administrative courts. Provision is also made for other courts – the Constitutional Court (*Tribunal Constitucional*), the Court of Auditors (*Tribunal de Contas*), courts of arbitration (*tribunais arbitrais*) and justices of the peace (*juílgados de paz*).

In the civil sphere, the ordinary courts with civil and criminal jurisdiction are the judicial courts, which are organised in three instances. In descending order of hierarchical rank and territorial scope, these are: the Supreme Court (*Supremo Tribunal de Justiça*, with jurisdiction over the whole country), the courts of appeal (*tribunais da relação*, one per judicial district and two in the Porto judicial district) and the district courts (*tribunais de comarca*, at first instance).

The judicial courts of first instance fall into three categories, depending on the subject matter of the action and the amount at stake: courts with general jurisdiction, specialised jurisdiction (criminal cases, family matters, minors, labour law, commercial, maritime courts, intellectual property, penitentiary and competition and regulation and the enforcement of cases) or specific jurisdiction (civil, criminal or mixed divisions; civil or criminal benches; civil or criminal benches dealing with minor matters).

The administrative courts include the first instance administrative and tax courts, the central administrative courts (North and South) and the Supreme Administrative Court (*Supremo Tribunal Administrativo*, covering the whole country).

Conflicts of jurisdiction between courts are resolved by a *Tribunal de Conflitos*, regulated by law.²

Court management

Courts of first instance

The management of each judicial court of first instance is carried out by a management board (*conselho de gestão*), presided over by a presiding judge. The board has a tripartite structure composed by the presiding judge, a co-ordinating prosecutor and the judicial administrator. In this management structure, each intervening party has its own powers. The presiding judge must communicate with the High Council of the Judiciary, the co-ordinating prosecutor with the High Council of the Public Prosecution, and the judiciary administrator with the Ministry of Justice (through the Directorate-General for the Administration of Justice). Certain matters are reserved for deliberation by the management board. As regards the judicial courts of first instance, the High Council for the Judiciary and the Prosecutor General, in co-operation with the Minister of Justice, establish, in their respective remits of competency, the strategic goals for the performance of the judicial courts of first instance over a three-year period and monitor compliance with those goals on a yearly basis. A similar mechanism applies to prosecutors.

The activity of each court is monitored throughout the judicial year, with quarterly meetings between representatives of the High Council of the Judiciary, the High Council of the Public Prosecution and the competent department of the Ministry of Justice, to follow up on the evolution of the results registered regarding the objectives that were established.

The Ministry of Justice authorises the opening of public competitions for access to the career of a judge, to be carried out by the Centre for Judicial Studies (induction and in-service continuous training institution for judges and prosecutors). The recruitment of court officials is managed by the Directorate-General for the Administration of Justice of the Ministry of Justice.

Appellate and Supreme Courts

Appellate courts and the Supreme Court are headed by a judge, elected by the seating judges of the respective courts and their administrative tasks are limited to supervising court services and guaranteeing its normal functioning, by delivering the necessary service orders. Besides those administrative tasks, presiding judges of the appellate courts and the Supreme Court also have jurisdictional attributions, such as to decide on competency conflicts between different units of the court.

At the administrative and fiscal jurisdiction, the management competencies of the presiding judges of the appellate and Supreme Courts are wider. For instance, the president of a Central Administrative Court or the president of the Administrative Supreme Court can: propose to the High Council for the Administrative and Fiscal Courts the criteria that should be applied in the distribution of cases among judges; plan and organise court human resources, aiming for an adequate distribution of workload per judge; reallocate cases whenever there is a modification of the number of judges; and temporarily reallocate judges when needed.

At the national level, the managing powers lie with the High Council of the Judiciary and the Prosecutor General, in co-operation with the Minister of Justice. As regards the administrative and tax courts of first instance, the management powers at the national level lie with the High Council for the Administrative and Tax Courts and, at the local level, with the presiding judge of each court of first instance and the judicial administrator (in courts with more than ten judges) or with the secretary of the court (in courts with less than ten judges).

The UN Human Rights Council's Special Rapporteur on the independence of judges and lawyers, in her 10 June 2015 report, concluded by calling on Portugal to: i) promote the greater managerial administrative autonomy of justice institutions; ii) ensure adequate capacity of the Superior Council of the Magistracy and the Public Prosecution; iii) increase investment in the promotion of access to justice; iv) ensure dedicated attention to victims of violence; and v) invest in the training of judges, prosecutors and lawyers.³

The UN Special Rapporteur cited above "believes that the management and maintenance of the electronic system of the database of the courts should be under the entire responsibility of the judicial bodies. This independence from the executive will enhance the independence of the entire judicial system and its accountability, in particular regarding the management of confidential information".

High judicial councils and human resources management of the judiciary

Recruitment, promotion and incompatibilities

Access to the profession of judge is a three-stage process comprising a public entrance examination, a theoretical and practical training course undertaken at the Centre for Judicial Studies (*Centro de Estudos Judiciários*), and an apprenticeship. If a candidate successfully completes all three stages, he/she will be appointed as a trial court judge at courts of first instance (*Juízes de Direito*). Judges continue their training throughout their career.

There are two high judicial councils: the High Council of the Judiciary (*Conselho Superior da Magistratura*) conducts regular inspections at the courts of first instance, and the High Council for the Administrative and Tax Courts (*Conselho Superior dos Tribunais Administrativos e Fiscais*) does the same for judges at these courts. Following each inspection, judges are ranked by merit, using the categories "very good", "good with distinction", "good", "sufficient" and "mediocre". If a judge is ranked in the "mediocre" category, they will be suspended from duty and an inquiry will be launched to assess their suitability for the job.

The High Council of the Judiciary and the High Council for the Administrative and Tax Courts are responsible for appointing, assigning, transferring, promoting and taking disciplinary action in respect of judges of the judicial courts and the administrative and tax courts.

To ensure that judges are independent and impartial, the constitution stipulates that practising judges may not carry out any other duties, be they public or private, with the exception of unpaid teaching or scientific research in the field of law. Judges can only be transferred, suspended, retired or dismissed in the cases provided for by law; they may not be held accountable for their decisions in adjudicating cases, other than where the law provides for exceptions.

Performance appraisal and discipline

The performance appraisal criteria of judges are personal attributes and qualities, including those required for performing the judicial function (dignity, independence, ethics, acceptance and comprehension of the environment in which the judge is serving, maintenance of good professional relations, a sense of justice), intellectual and professional capacities (a high intellectual level, ability to comprehend concrete legal situations, good quality of work), organisational abilities and an ability to adapt to the function.

The performance appraisal of Portuguese judges is regulated by the Statute of Judicial Magistrates and the Regulation on the Judicial Inspection of the Judicial High Council of the Judiciary. Disciplinary proceedings are regulated in the same way. This inspection body (Judicial Assessment Service) is made of some 20 inspectors who are former judges from the courts of appeal, with more than 20 years of experience as judges. Each inspector has a secretary for administrative tasks, such as collecting the judicial proceedings or court statistics that the inspector will need to evaluate the productivity and efficiency rates of the judge who is under performance evaluation. This regular performance appraisal is carried out after each judge's first year in office and then every four years. Extraordinary appraisals can be carried out whenever the High Judicial Council deems necessary.

The marks awarded can be Mediocre, Sufficient, Good and Very Good. These are based on the following criteria: mode and volume of work, difficulty and management of the service for which he/she is in charge, his/her ability to simplify pleadings, professional development and training, intellectual profile, published legal works, civic aptitude and others. The appraisal leads to a detailed report with a mark proposal, which has to be ratified (or not) by the High Judicial Council, prior to a hearing of the incumbent. The decision of the High Judicial Council may be appealed before the Supreme Court. The Supreme Court has traditionally been reluctant to review the facts of the case in disciplinary proceedings by primarily relying on the conclusions the judicial inspection report. This may hamper judicial independence by biasing the factual narrative of the decision in favour of the judicial inspection. This issue was addressed also by the European Court of Human Rights in a recent ruling.⁴ Moreover, the review regime for disciplinary procedures has been changed in the new Judicial Magistrates Bylaw, which is being discussed in parliament.

Notes

¹ Law of 1931 (Decree 19243 of 16 January 1931, amended by Decree 19438 of 11 March 1931 and Decree-Law 23185 of 30 October 1933).

² This discussion is based on a description of the judicial system of Portugal, European e-Justice Portal: https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-pt-en.do?member=1.

³ The Magistrates' Union of the Public Prosecutor's Office: www.smmp.pt/wp-content/uploads/Grabiela-Knaul-Visita-de-2015.pdf.

⁴ Ramos Nunes de Carvalho e Sá v. Portugal, judgement of 6 November 2018 (Grand Chamber), <http://hudoc.echr.coe.int/eng-press?i=003-6242630-8119316>.

Reference

UN (2015), *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Addendum, Mission to Portugal*, United Nations Human Rights Council, A/HRC/29/26/Add.4, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/136/97/PDF/G1513697.pdf?OpenElement>.



From:
Justice Transformation in Portugal
Building on Successes and Challenges

Access the complete publication at:
<https://doi.org/10.1787/184acf59-en>

Please cite this chapter as:

OECD (2020), “The national court system in Portugal”, in *Justice Transformation in Portugal: Building on Successes and Challenges*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/cc123123-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.