



PORTUGAL

Portugal

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Country Summary

Portugal's press freedom is safeguarded by a Union of Journalists, self-regulation instruments, and an independent regulatory authority. Significant media-related laws were implemented to uphold freedom of expression and adapt to modern challenges. There is one law promoting transparency in media ownership which led to modifications in press and radio laws. Another law aligns with the Audiovisual Media Services Directive, affecting television and registration with the Portuguese Media Regulatory Authority (ERC). The Portuguese Charter of Human Rights in the Digital Era, adopted in 2021 and revised in 2022, safeguards digital freedoms and disinformation concerns, with some clauses revoked to avoid suppressing expression. One Law transposes the European Accessibility Act for Products and Services, including audiovisual media, addressing accessibility barriers. Amid the COVID-19 pandemic, one Law adapted TV obligations for health information, and one Law supported media financially. Judicial decisions emphasize the balance between freedom of expression and protection of honor. The financial vulnerability of media groups poses a significant challenge, prompting discussions about potential public financial support to maintain media independence. While Portugal maintains

⁵⁵⁸ Credits: Graphics Studio MH

strong legal protections for freedom of expression and press, the issue of media sustainability remains a key concern.

Introduction

There is consensus in Portugal being a democracy, anchored in the rule of law and the recognition of fundamental rights. The 1976 Constitution (Article 2) declares that the Portuguese Republic is based on “plural democratic expression” and recognizes “freedom of expression and information” (Article 37) and “freedom of the press and the media” (Article 38). It is noteworthy that the Constitution also gives a constitutional grounding to the principle of the regulation of the media under an independent regulatory authority (Article 39)⁵⁵⁹.

In general, Portugal is a part of all major international human rights instruments, some of which establish mechanisms either of supervision or of quasi-judicial control (see, for example, the International Covenant on Civil and Political Rights and the acceptance of jurisdiction of the Human Rights Committee⁵⁶⁰). In Portugal, among several other public entities, there is a Union of Journalists, responsible for the adoption of self-regulatory instruments such as the Code of Ethics, modified in 2017, and the Deontological Council, which accepts complaints and adopts advisory opinions.⁵⁶¹

Portugal was ranked 7th out of 180 countries in the Reporters without Borders (RWB) World Press Freedom Index.⁵⁶² This is the highest position during the period ranging from 2015 to 2022. Since 2020 Portugal has always been in the top 10. This amounts to a positive evolution since the country was ranked 26th in 2015. In its 2022 report, RWB states that “Freedom of the press is robust in Portugal. Journalists can report without restrictions, although some face threats from extremist groups.”⁵⁶³ In 2019, RWB urged Portugal to “drop charges against “Football Leaks” whistleblower, Rui Pinto⁵⁶⁴, who has been on trial since 2020 under a series of criminal charges.

Finally, in its last report on Portugal (periodical review, 2019), the UN Human Rights Council made a reference to the somehow surprising position of the Committee on the Elimination of Racial Discrimination, which recommended “Portugal [to] investigate and, as appropriate,

⁵⁵⁹ <https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf>.

⁵⁶⁰ Optional Protocol to the International Covenant on Civil and Political Rights, 16 December 1966, ratified by Portugal in 1983. It is worth to notice that Portugal has ratified 17 out of 18 universal human rights treaties. See <https://indicators.ohchr.org/>.

⁵⁶¹ *Queixa de Licínia Girão contra Pedro Almeida Vieira, diretor do jornal online “Página Um”*, 23 July 2023, <https://jornalistas.eu/queixa-de-licinia-girao-contra-pedro-almeida-vieira-diretor-do-jornal-online-pagina-um/> (in Portuguese).

⁵⁶² <https://rsf.org/en/index?year=2022>

⁵⁶³ <https://rsf.org/en/country/portugal>

⁵⁶⁴ <https://rsf.org/en/portugal-urged-drop-charges-against-football-leaks-whistleblower>.

prosecute and punish acts of hate speech, including those committed by politicians during political campaigns”⁵⁶⁵.

I. Legislation

On the July 28th 2015, Law 78/2015,⁵⁶⁶ which regulates the promotion of transparency on ownership, management and means of financing of the entities that perform activities of social communication, was adopted. The adoption of this law led to the modification of Article 15, as well as the revocation of Article 4(2) and Article 16 of the Law of the Press (Law 2/99, 13 January 1999). Furthermore, it led to the revocation of Article 3 of the “Lei da Rádio” (Law of Radio, Law 54/2010, 24 December 2010).

Law 74/2020, of 19 November 2020⁵⁶⁷ on the Transposition of Directive (EU) 2018/1808 of the European Parliament and the Council, of 14 November of 2018, amending Directive 2010/13/EU on the coordination of certain provisions laid down in law, regulation or administrative action in Member States concerning the provision of audiovisual media services (AVMS Directive) in view of changing market realities, implied several changes in the Law of Television, namely related with the on-demand audiovisual media services and video sharing platforms.

As a consequence, considering the enlargement of the entities that need to be registered in the “Entidade Reguladora para a Comunicação Social (ERC)” (Portuguese Media Regulatory Authority), Decree-Law 107/2021, of 6 December 2021,⁵⁶⁸ changes the regulation of the rates paid by those entities to the Media Regulatory Authority, and Portaria n.º 24/2022, of 7 January,⁵⁶⁹ stipulates the amounts to be paid to ERC by audiovisual media services. These rates are part of the Budget of the Portuguese Media Regulatory Entity and have been disputed by the major media groups in the past. The Constitutional Court ruled that these rates and taxes did not infringe the Constitution, nor the protection guaranteed to the freedom of the press.

In May 2021, the Portuguese Parliament adopted the Portuguese Charter of Human Rights in the Digital Era, Law 27/2021, of 17 May, which was later modified in August 2022 by Law 15/2022.⁵⁷⁰ This law was adopted by the Portuguese Parliament, invoking the need to protect human rights in the digital era. Article 4 establishes freedom of expression in the digital environment (side by side with artistic creation). Furthermore, Article 6 deals with the right to protection against disinformation.

⁵⁶⁵ Report of the Office of the United Nations High Commissioner for Human Rights, *Compilation on Portugal*, A/HRC/WG.6/33/PRT/2, p. 2.

⁵⁶⁶ <https://files.dre.pt/1s/2015/07/14600/0510405108.pdf> (in Portuguese).

⁵⁶⁷ https://pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=3354A0012&nid=3354&tabela=leis&inverso= (in Portuguese).

⁵⁶⁸ <https://files.dre.pt/1s/2021/12/23500/0001300016.pdf2> (in Portuguese).

⁵⁶⁹ <https://diariodarepublica.pt/dr/detalhe/portaria/24-2022-177309297> (in Portuguese).

⁵⁷⁰ https://pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3446&tabela=leis&so_miolo= (in Portuguese).

In fact, this was the main article modified in August 2022, when its paragraphs 2 to 6 were revoked. Article 6 had originated in two requests to the Portuguese Constitutional Court (by the President of the Republic and the Portuguese Ombudswoman, “Provedora de Justiça”) precisely because of the definition of disinformation and the limits of satire, enshrined in former paragraphs 2 to 4. The constitutionality of this article was questioned on the grounds of non-acceptable restrictions to the right of freedom of expression. The constitutionality of the mechanism of complaint to the Portuguese Media Regulatory Authority (enshrined in former paragraph 5) and the support and financing of new mechanisms for “certifying” “truth” in information (enshrined in former paragraph 6) were also questioned by those two entities to the Constitutional Court. Finally, the Parliament decided to revoke those questionable paragraphs of Article 6, anticipating a negative decision of the Constitutional Court, and leaving the jurisdiction with no object to decide upon.⁵⁷¹

At the end of 2022, Decree-Law 82/2022, of 6 December 2022, promoted the transposition of Directive (EU) 2019/882 on the accessibility requirements for products and services. This Directive, known as the European Accessibility Act, aims to harmonize accessibility requirements for certain products and services by eliminating and preventing any free-movement barriers that may exist because of divergent national legislation, and to bring benefits to businesses, people with disabilities and the elderly. Applying accessibility requirements will clarify the existing accessibility obligation in EU law, particularly in public procurement and structural funds. The Decree-Law includes, as prescribed in the Directive, its application to audio-visual media services (Article 2(2)(b)) and designates responsibility for its enforcement to the Portuguese Media Regulatory Authority (Article 28 (1)(b)).

In the context of COVID 19, two legislative initiatives by the Government should be highlighted. Law 7/2020⁵⁷² established exceptional and temporary responses to the SARS-CoV-2 epidemic, changing Article 51 of the Law of Television, introducing line o), which included, within the obligations of public service, “to promote the broadcasting of programs that advise and stimulate the practice of physical exercise and good nutrition in case of the collective duty to remain at home because of the state of exception or the necessity of social isolation”. Also, during the pandemic, the government decided to anticipate the procurement of institutional publicity to financially support media services (Decree-Law 20-A/2020, of 6 May.⁵⁷³) This last decision was by far the most disputed one, because of the alleged risks of an attack to media independence. The criteria to define the distribution of the institutional publicity were accepted with no relevant debate. Some of the media (among them, “Observador,” the most relevant newspaper online) decided to decline this public financial

⁵⁷¹ Constitutional Court Decision <https://www.tribunalconstitucional.pt/tc/acordaos/20230066.html> (in Portuguese).

⁵⁷² https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3357&tabela=leis&so_miolo= (in Portuguese).

⁵⁷³ <https://diariodarepublica.pt/dr/detalhe/decreto-lei/20-a-2020-133161452> (in Portuguese).

support and, on the contrary, transformed this issue into an interesting campaign to attract more online subscribers.

The fact is that the financial weakness of media groups in Portugal, and the corresponding economic consequences to journalism (on average, journalists' salaries are very low), are probably the most real threat to journalism in general, independence of the media and to the freedom of information. This phenomenon has been aggravated by the COVID pandemic. It is, however, a structural problem, with some worrying symptoms, such as a very steep decrease in the sales of newspapers (without an equivalent increase in online subscriptions).

II. Non-legislative developments

A new Code of Ethics for Journalists was adopted on 30 October of 2017,⁵⁷⁴ after being approved in the 4th Congress of Journalists (on the 15th of January) and confirmed by referendum on the 26th, 27th and 28th of October. Three main substantive changes were introduced: 1) in respect to the exception of, for undoubtable reasons of public interest, the obligation of the journalist to identify him/herself as such when obtaining information, images or documents it was assessed that it should only be the case after any other means had been impossible to put into practice (paragraph 4); 2) the obligation not to identify minors was enlarged – “[T]he journalist shall not reveal, directly or indirectly, the identity of minors, whether they are sources, witnesses of fact, victims or authors of acts that the law qualifies as crimes” (paragraph 8); 3) the grounds on prevention of discriminatory treatment were enlarged to include “color, ethnicity, language, territory of origin, religion, political or ideological convictions, education, economic situation, social condition, age, sex, gender or sexual orientation.”

III. Enforcement

Most national judicial decisions during this period are related to restrictions to freedom of expression and press freedom because of the protection of honor and reputation.⁵⁷⁵ Until quite recently, there was a trend to accept (maybe too easily) the prevalence of the protection of “honor.”⁵⁷⁶ However, in the last few years there has been a significant change. Without denying protection to rights relating to personality, the Supreme Court evaluates the protection under the expectable criteria, probable decision, and values weighting of the

⁵⁷⁴ <https://jornalistas.eu/novo-codigo-deontologico/> (in Portuguese).

⁵⁷⁵ Portuguese Penal Code, Chapter VI, *Crimes against honour*, articles 180 ff.

⁵⁷⁶ *A liberdade de expressão e informação e os direitos de personalidade na jurisprudência do Supremo Tribunal de Justiça (Sumários de acórdãos das Secções Cíveis e Criminais, de 2002 a Janeiro de 2015)*, Gabinete dos Juizes Assesores, Supremo Tribunal de Justiça (in Portuguese), <https://www.stj.pt/wp-content/uploads/2017/10/cadernoliberalidadeexpressoinformaodireitospersonalidadejurisprudncia-stj.pdf>.

European Court of Human Rights (ECtHR).⁵⁷⁷ This “nationalization” of an international interpretation of “necessity” and “proportionality” is relevant, even though it is still difficult to anticipate a clear evolution of jurisprudence.

At the international level, in *Patrício Monteiro Telo de Abreu* (June 2022), the ECtHR ruled that Portugal had violated the right to freedom of expression under the Article 10 of the European Convention on Human Rights (ECHR). A Portuguese court convicted and sentenced the applicant (an elected municipal councilor) to the payment of a fine and damages for aggravated defamation to another municipal councilor, on the grounds that the applicant had published three cartoons that were considered defamatory on a blog that he administered.⁵⁷⁸ The ECtHR concluded unanimously that those cartoons referred to an ongoing political debate (criticizing the municipal leadership). Despite the sexual stereotyping of one female member of the municipal board, the ECtHR found that the caricatures had remained within the limits of exaggeration and provocation that were typical of satire. It also found that the criminal sanction in the present case could have a chilling effect on satirical forms of expression concerning political issues.

In January 2022, in *Freitas Rangel*, the ECtHR held that Portugal had violated Article 10 of the ECHR.⁵⁷⁹ The case concerned the applicant’s conviction for critical statements made about the professional bodies for judges and for public prosecutors at a hearing of a parliamentary committee. In particular, he had linked the judiciary and the prosecution service to, among other things, interference in politics and widespread breaches of confidentiality. He had been convicted and had had to pay EUR 56,000 in fines and damages. The ECtHR found that the fine and the damages had been wholly disproportionate and had to have had a chilling effect on political discussion. The domestic courts had failed to give adequate reasoning for such interference with the applicant’s free speech rights, which had not been necessary in a democratic society.

In October 2019, in *L.P. and Carvalho*, the ECtHR found that Portugal had violated article 10.⁵⁸⁰ The case concerned findings of liability against two lawyers for defamation and for attacking a person’s honor, in respect to two judges whom the lawyers had criticized in documents they had drawn up in their capacity as legal representatives.

⁵⁷⁷Supreme Court of Justice, 4555/17.1T8LSB.L1.S1, 1.^a Secção, 2 December 2020, <https://jurisprudencia.csm.org.pt/ecli/ECLI:PT:STJ:2020:24555.17.1T8LSB.L1.S1.E4/> (in Portuguese). As for other Judgements on this topic, see [https://jurisprudencia.csm.org.pt/?queries\[courts\]\[\]=1&queries\[freesearch\]=liberdade%20de%20express%C3%A3o](https://jurisprudencia.csm.org.pt/?queries[courts][]=1&queries[freesearch]=liberdade%20de%20express%C3%A3o).

⁵⁷⁸ *Patrício Monteiro Telo de Abreu v. Portugal*, 7 June 2022, <https://hudoc.echr.coe.int/fre?i=001-217556> (available in French).

⁵⁷⁹ *Freitas Rangel v. Portugal*, 11 January 2022, <https://hudoc.echr.coe.int/fre?i=001-214674>.

⁵⁸⁰ <https://hudoc.echr.coe.int/eng?i=001-196399> (available in French).

In several other cases, such as *Antunes Emídio and Gomes da Cruz*,⁵⁸¹ or *Paio Pires de Lima*,⁵⁸² the pattern of violation of Article 10 was materially similar, putting at stake freedom of expression and the freedom of the press.

In *Pinto Coelho*, the ECtHR held Portugal responsible for the violation of freedom of expression because of the criminal law fine imposed on a journalist for having broadcasted excerpts in a news report which included sound recording from a court hearing obtained without permission from the judge.⁵⁸³ This specific case, such as older ones (*Campos Dâmaso*⁵⁸⁴ and *Laranjeira Marques da Silva*⁵⁸⁵), calls attention to the topic of the secrecy of judicial investigations (“segredo de justiça”), which still is a divisive and contentious issue in relations between the media and the judiciary.

Conclusion

In general, the right to freedom of expression is robustly guaranteed in Portugal, either in the Constitution or by specific legislation. Considering the case-law of the ECtHR, no serious discrepancy has been detected between the practice of national institutions, including judicial organs, and international standards of protection. However, debate continues on the ambiguity in the reach of the secrecy of judicial investigations and the harmonization of certain rights related to personality with an effective protection of freedom of information. This is an area for improvement, although there is no noticeable judicial decision restricting the rights of journalists because of alleged violations of the secrecy of judicial investigation referred to above. A key threat to freedom of expression and to freedom to information in Portugal is the financial weakness of media groups. It seems inevitable therefore that there will be a discussion about the adoption of some process or mechanism of public financial support of the press (broadly understood), considering that this debate is already taking place in other European countries.

⁵⁸¹ *Antunes Emídio and Soares Gomes da Cruz v. Portugal*, 24 September 2019, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-195982%22%5D%7D>.

⁵⁸² *Paio Pires de Lima v. Portugal*, 12 February 2019, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-189757%22%5D%7D>.

⁵⁸³ *Pinto Coelho v. Portugal*, 22 March 2016, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-161523%22%5D%7D>.

⁵⁸⁴ *Campos Dâmaso v. Portugal*, 24 April 2008, <https://hudoc.echr.coe.int/tkp197/view.asp#%7B%22fulltext%22:%5B%22D%C3%A2maso%22%5D%2C%22itemid%22:%5B%22001-86076%22%5D%7D>.

⁵⁸⁵ *Laranjeira Marques da Silva v. Portugal*, 19 January 2010, <https://hudoc.echr.coe.int/tkp197/view.asp#%7B%22itemid%22:%5B%22001-96776%22%5D%7D>.