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Business and human rights

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Portugal

Portugal



1. What kind of judicial protection do I have in your country as a victim of business- related human rights violations? Does this protection include compensation?

Redress for business-related human rights violations is available through the courts, namely those with jurisdiction over civil, criminal, administrative and labour matters, taking into account the type of violation concerned. This protection may be in the form of filing an action or complaint with the criminal investigation bodies or the Public Prosecution Service (*Ministério Público*). Under such an action, the defendant may be requested to provide something, do something, refrain from an act contrary to the law or to tolerate a certain act, as well as to repair damages or moral harm suffered as a result of the defendant's behaviour. The Portuguese Criminal Code (*Código Penal*) provides for the liability of legal persons in the case of certain crimes and under certain circumstances.

Civil, criminal, administrative and labour procedural law regulates the procedures for obtaining compensation.

2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?

There is no specific set of national rules for gross human rights violations. However, where such a violation is a crime or an administrative offence, the assessment of the seriousness of a given violation is taken into account when determining the applicable penalty and the duration or amount thereof. This is the case for environmental crimes and severe labour exploitation.

3. I am the victim of a human rights violation resulting from activities carried out outside the European Union by a European transnational corporation. Do I have access to the courts in your country if I am not an EU citizen or I don't live in the EU? Under what conditions can I claim a violation of my rights? Where can I find additional information?

Under civil law, the rules set out in Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (known as 'Brussels I Recast') and in the Lugano Convention apply.

Under Regulation (EU) No 1215/2012 persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State, and a company (or other legal person) is deemed to be domiciled at the place where it has its statutory seat, central administration or principal place of business. That said, special rules of jurisdiction are provided for in certain matters, particularly in matters relating to tort, delict or quasi-delict, over which the court for the place where the harmful event occurred or may occur has jurisdiction. The Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

(the Lugano Convention) lays down identical rules.

Where a company is not domiciled in the European Union or in a State party to the Lugano Convention, the international jurisdiction of the Portuguese courts may be derived from Portuguese civil procedural law. This will be the case where the right invoked cannot be enforced except by means of an action brought in a Portuguese court (for instance, because the combination of the international jurisdiction rules of different countries results in there being no court with jurisdiction to hear the dispute) or where it is very difficult for the complainant to bring an action abroad and there is an important personal or real connecting factor between the subject-matter of the dispute and the Portuguese legal system.

Under criminal law, the rules of jurisdiction deriving from the Criminal Code apply. Thus, unless there is an international treaty or convention to the contrary, the general principle in force is that Portuguese criminal law is applicable to acts committed in Portuguese territory, whatever the nationality of the offender, or on board Portuguese vessels or aircraft. That said, unless there is an international treaty or convention to the contrary, Portuguese criminal law may apply to acts committed outside national territory under certain circumstances or when certain crimes are involved. With regard to criminal offences committed outside national territory involving legal persons, Portuguese law only applies when the facts are committed by or against a legal person that has its statutory seat in Portuguese territory, irrespective of whether or not the victim is an EU citizen or lives in the EU.

4. Can ombudsman institutions, equality bodies or national human rights institutions support victims of business-related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen or I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?

Intervention in investigations by the Ombudsman, by equality bodies (the Commission for Equality in Labour and Employment (*Comissão para a Igualdade no Trabalho e no Emprego* - CITE) and the Commission for Citizenship and Gender Equality (*Comissão para a Cidadania e Igualdade de Género* - CIG)), by the [Labour Inspectorate](#) and by the [Environmental Inspectorate](#) is limited to violations of national laws occurring in Portuguese territory. The fact that a victim of a human rights violation committed by a European transnational company outside the European Union (EU) is not an EU citizen or does not live in the EU is irrelevant for prompting an intervention by these bodies.

5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations also apply to violations that occur outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of the system?

There is no legal obligation for such reports. Nevertheless, within the framework of the OECD Guidelines for Multinational Enterprises, the National Contact Point (NCP) for these Guidelines, coordinated by the Directorate-General for Economic Activities (*Direção-Geral das Atividades Económicas* - DGAE) and the Agency for Investment and Foreign Trade of Portugal (*Agência para o Investimento e Comércio Externo de Portugal* - AICEP Portugal Global), provides a (non-judicial) mediation and conciliation platform for resolving complaints against companies concerning alleged non-compliance with the Guidelines. Thus, any individual or organisation that considers that the actions or activities of a multinational enterprise are not consistent with the Guidelines can submit a formal complaint to the NCP based in one of the countries where that enterprise operates. More information can be found [here](#), including the NCP's annual reports on implementation of the OECD Guidelines.

6. Do I have specific rights if I am a vulnerable victim seeking a remedy for business-related human rights violations? Can I have access to legal aid, and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?

According to Article 67-A of the Criminal Procedure Code (*Código de Processo Penal*):

'a) "victim" means:

i) a natural person who has suffered harm, inter alia physical, psychological, emotional or moral harm or damage to property, directly caused by an act or omission in the commission of a crime;

ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;

b) "particularly vulnerable victim" means a victim who is particularly vulnerable as a result, inter alia, of their age, state of health or disability, and the fact that the type, level and duration of victimisation caused harm with serious consequences for their psychological well-being or for the conditions for their social integration;

c) "family members" means the spouse of the victim or the person living in cohabitation with the victim, the victim's direct relatives and siblings, and persons financially dependent on the victim;

d) "child" means any person under the age of 18.'

One of the rights enshrined in the Statute of the Victim, approved by Law No 130/2015 of 4 September 2015, is legal aid, the legal framework of which is set out in Law No 34/2004 of 29 July 2004. As regards legal aid, please visit the relevant European e-Justice Portal [page](#).

Last update: 27/05/2025

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