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National legislation

Portugal

This page provides you with information on the legal system in Portugal.

1 Instruments or sources of law which set out legal rules

The following are traditionally regarded as sources of law in Portugal:

Constitutional laws - which comprise the Portuguese Constitution itself, miscellaneous constitutional laws and laws amending the Constitution;

The 'rules and principles of general or common international law', the 'rules set out in duly ratified or approved international agreements', 'rules issued by the competent bodies of international organisations to which Portugal belongs (...) on condition that this is laid down in the respective constituent treaties' and the 'provisions of the treaties that govern the European Union and the rules issued by its institutions in the exercise of their respective responsibilities' – Article 8 of the Constitution;

Ordinary laws, which comprise laws enacted by the Assembly of the Republic, decree-laws issued by the Government and regional legislative decrees adopted by the Legislative Assemblies of the Autonomous Regions of the Azores and Madeira;

Instruments with effect equivalent to that of laws, such as acts approving international conventions, treaties or agreements, generally binding decisions of the Constitutional Court declaring measures to be unconstitutional or illegal, collective labour agreements and other collective instruments regulating labour relations;

Regulations, or legislative instruments of lower status than laws, whose purpose is to supplement laws and fill out the details so that they can be applied or implemented. These comprise implementing decrees, regulations, decrees, regional implementing decrees, decisions, rules, ministerial implementing orders, executive orders, police regulations issued by Civil Governors, and municipal orders and regulations.

2 Other sources of law

Views differ as to the admissibility and importance of other sources outside the sphere of the State's political power to create written law, depending on whether the sources are regarded as a means of establishing legal rules or a means of disclosing such rules, or both. A distinction is sometimes drawn between direct and indirect sources, which avoids some of the difficulties arising from the differences in basic approach.

The following are commonly referred to as possible sources of law:

Custom, in other words the repeated and habitual adoption of a particular line of conduct that is generally believed to be mandatory. This can be regarded as a source of law only in certain subject areas. Rules created in this way may, for instance, be found in the field of public international law (e.g. the principle of the immunity of foreign States from prosecution), international private law and administrative law.

Case-law, i.e. the set of principles emerging from judgments and decisions handed down by the courts; it is regarded in some quarters as not constituting a genuine source of law but as significant merely in revealing the meaning of legal provisions by providing solutions to problems of interpretation that may be followed in other instances according to the weight carried by the logical and technical arguments on which they are based. Some authors include in this category not only court decisions in specific cases but also judicial rulings which have the force of law (generally binding decisions of the Constitutional Court) because, in their view, they are all instruments which actually create generally applicable law.

Equity, whereby the courts are empowered to formulate legal rules appropriate to the specific features of individual cases under their examination, relying on general principles of justice and the ethical awareness of the judge. 'The courts may take a decision based on equity only where: (a) there is a legal provision allowing it; (b) there is agreement between the parties and appeal to a higher court is possible; (c) the parties have previously agreed to rely on equity' – Article 4 of the Civil Code.

Usage, in other words repeated social practices that are not considered to be mandatory but are regarded as important in legal transactions, in particular in the formalisation of legal relations, especially in the field of commerce. Usage may be taken into account by the courts where provided for by law and where it is not 'contrary to the principles of good faith' – Article 3 of the Civil Code. Legal rules cannot therefore be created independently through usage, and many do not consider usage to be a genuine source of law.

Legal theory, or the opinions of legal writers, should not be regarded as a genuine source of law, although it plays an important role in the scientific and technical development of legal knowledge and has significant repercussions on the final result of the work of those responsible for interpreting and applying legal rules.

3 Hierarchy of the sources of law

When reference is made to the hierarchy of laws, what is meant is the relative status of the different instruments, in other words their position in an ordered scale.

In this regard, some argue that a hierarchy can be established only on the basis of the method of creation. According to this view, the hierarchy is not based on the relative status of legal rules but is established only between the sources by which they were created.

Whichever view is taken, an order of precedence can be drawn up.

The hierarchical order of the different sources listed in section 1 is as follows:

the Constitution and constitutional laws;

the rules and principles of general or common international law and international agreements (i.e. all the instruments referred to in section 1(b));

laws and decree-laws;

regional legislative decrees;

instruments having an effect equivalent to that of laws;

regulations.

4 Procedures for bringing international rules into force in Portugal

International legislative instruments are transposed into Portuguese law in accordance with the following principles set out in Article 8 of the Portuguese Constitution:

'The rules and principles of general or common international law form an integral part of Portuguese law';

'The rules set out in duly ratified or approved international agreements shall come into force in Portuguese national law once they have been officially published, and shall remain so for as long as they are internationally binding on the Portuguese State';

'Rules issued by the competent bodies of international organisations to which Portugal belongs shall come directly into force in Portuguese national law, on condition that this is laid down in the respective constituent treaties';

'The provisions of the treaties that govern the European Union and the rules issued by its institutions in the exercise of their respective responsibilities shall apply in Portuguese national law in accordance with Union law and with respect for the fundamental principles of a democratic State based on the rule of law'.

5 The various authorities empowered to adopt rules of law

The authorities empowered to adopt rules of law are the Assembly of the Republic, the Government, the Regional Governments and Legislative Assemblies of the Azores and Madeira, local authorities and certain administrative authorities.

6 Process for adopting these rules of law

The way in which rules are adopted varies according to the specific procedures to be followed by each body responsible for adopting the rules. The different types of legislative instrument are therefore generated through different processes. The two most formal and most important procedures for adopting legal rules are described below.

The most complex procedure, involving the Assembly of the Republic, comprises the following steps:

Initiation of legislation: 'the power to initiate legislation lies with Members, parliamentary groups and the Government, and also, subject to the terms and conditions laid down by law, with groups of registered electors. The power to initiate legislation in relation to the autonomous regions lies with the respective regional Legislative Assemblies' (Article 167(1) of the Constitution).

Initial admission, publication, registration, numbering and assessment: this phase involves consideration of the admissibility of the bill, publication of the text in the Assembly of the Republic's Official Gazette, administrative processing and, finally, evaluation of its content.

Discussion and approval: this involves a debate on general issues, a further debate on specific points, a vote on the bill as a whole, a vote on specific points and a final overall vote. For a bill to be passed, a simple majority, an absolute majority or a qualified majority may be required.

Scrutiny by the President of the Republic within the period laid down by law, following which the President may promulgate the proposed text or exercise the right of veto. In the latter case, the measure is discussed again by the Assembly of the Republic. If the vote is confirmed or amendments are made, the text is again forwarded to the President for promulgation, which must also take place within a pre-established period of time. The President of the Republic is responsible for 'promulgating laws, decree-laws and regulatory decrees and ordering their publication, and signing resolutions of the Assembly of the Republic that approve international agreements and other Government decrees' (Article 134(b) of the Constitution).

Publication: once it has been promulgated, the President must order the text of the new legislation to be published in the Official Gazette of the Portuguese Republic.

The procedure whereby the Government adopts legislation comprises the following main steps:

Initiation of legislation: draft legislation is put forward by the office of the minister concerned;

Enquiry: during this stage, the minister proposing the draft must canvass opinions, and the bodies specified by the Constitution and by law must also be consulted;

Preliminary and detailed assessment: proposals are examined and evaluated once they have been initially endorsed.

Approval: although certain types of legislation do not have to be approved by the Council of Ministers, the latter is usually responsible for approving the draft;

Scrutiny: 'within forty days of the receipt of any government decree for enacting, ... the President of the Republic shall either promulgate the decree or exercise his right of veto. In the latter case, he shall inform the Government in writing of the reasons for so doing' (Article 136(4) of the Constitution);

Publication of the definitive text in the Official Gazette of the Portuguese Republic.

7 Procedures for bringing national rules into force

'Laws shall be binding only after publication in the Official Gazette.' 'Once a law has been published, it shall enter into force after the period stipulated in the law itself has elapsed or, where no such period is stipulated, after the period provided for in special legislation' (Article 5 of the Civil Code).

Article 2 of Law No 74/98 of 11 November 1998, in its current wording, provides as follows:

'1. Legislative instruments and other acts of a general nature shall enter into force on the date laid down therein; under no circumstances may they enter into force on the date of publication.'

'2. If no date is set, the acts referred to in paragraph 1 shall enter into force throughout Portuguese territory and abroad on the fifth day following publication.'

'4. The time period referred to in paragraph 2 shall start from the day immediately following publication on the internet site managed by *Imprensa Nacional Casa da Moeda, SA*.'

8 Means for settling possible conflicts between different legal rules

The most important role in this regard is played by the Constitutional Court, which must declare to be unconstitutional any rules that conflict with the Portuguese Constitution or the principles enshrined therein.

When considering specific cases laid before them, the courts cannot apply provisions that infringe the Constitution or the principles deriving from it.

During the interpretation process carried out with a view to weighing up the facts submitted for their consideration, the courts must settle any conflicts arising between different legal rules, always having regard to the above-mentioned hierarchy of sources. In doing so, they must consider the system as a unified whole, without acknowledging any gaps or inconsistencies, in particular of a logical or semantic nature, weighing up the circumstances underlying the adoption of the rules and the specific conditions prevailing at the time the proceedings take place. This process always requires a minimum correspondence in wording, even if imperfectly expressed, with the approach taken in the legislation and assuming that the legislature opted for the 'most judicious' solutions and was able to 'express its intentions in appropriate terms' (Article 9 of the Civil Code).

As far as conflicts between rules in the area of private international law are concerned, please refer to the factsheet on 'Applicable law'.

Legal databases

Digesto is Portugal's official legal database and contains the Official Gazette (*Diário da República*).

Digesto — Integrated Legal Information System

Digesto was set up by Council of Ministers Resolution No 48/92 of 31 December 1992 and contains:

Legislative acts published in the 1st and 2nd series of the Official Gazette.

Free, integrated, detailed and up-to-date legal information, more specifically:

the period of validity, date of taking effect and notes relating to acts published in the 1st series of the Official Gazette since 5 October 1910 and

miscellaneous documents from previous decades, and acts in the 2nd series of the Official Gazette processed by PCMLEX (central database of the Digesto system);

all relevant information, such as enabling provisions, regulations, implementing legislation, amendments produced and implemented, applicable Community law, administrative guidelines issued by the Directorate-General for the Budget, case law and collective instruments regulating labour relations;

access to three other databases: LEGAÇOR – Azores regional legislative database, REGTRAB – specific database for labour regulations, and DGO–DOUT - specific database containing circulars and opinions issued by the Directorate-General for the Budget.

access, via interoperability with the legal databases of the Ministry of Justice, the Prosecutor-General's Office (PGR) and the Portuguese parliament (through its database, AP – *Atividade Parlamentar*), to case law emanating from the main courts, to PGR opinions and to all preparatory work on laws from the start of the legislative process up to publication.

Electronic Official Gazette (*Diário da República Eletrónico* – DRE)

Under Decree-Law No 83/2016 of 16 December 2016, the Official Gazette is a public service with free and universal access, published solely online. This public service is provided by *Imprensa Nacional-Casa da Moeda, S. A.* (INCM), which publishes the Official Gazette on its website. Users have free, universal access and are able to consult, print, file and search the content of legislative acts published in the 1st and 2nd series of the Official Gazette, in electronic format.

The service provided by the electronic Official Gazette must include:

the legal text of acts requiring publication in the Official Gazette, under the Constitution and the law, more specifically Law No 74/98 of 11 November 1998, amended and republished by Law No 43/2014 of 11 July 2014.

a tool for the up-to-date consultation of the consolidated text of relevant legislation (the consolidated text has no legal value);

a tool for the translation of legal terms;

a tool for keyword searches of acts requiring publication in the Official Gazette;

duly processed and systematised legal information;

interconnection with sectoral databases providing additional legal information, more specifically case law, Community law, administrative guidelines and legal theory;

the free sending to subscribers' email accounts of the tables of contents of the 1st and 2nd series of the Official Gazette.

Useful links:

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