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In-Depth: Dispute Resolution (formerly The Dispute Resolution Review) provides an indispensable overview of the civil court systems in major jurisdictions worldwide. It examines the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. It is also forward-looking, with astute analysis of likely future trends and developments.

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Portugal

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Summary

Introduction

In Portugal, judicial litigation is the most widely used type of dispute resolution. The majority of conflicts are resolved by the national judicial system through its large court network, subject to specific and complex procedural rules. However, owing to the lack of efficiency of the Portuguese judicial system, the importance of arbitration and other alternative dispute resolution (ADR) methods has been increasing significantly. In fact, in 2023, more than 14,451 arbitration proceedings were initiated before arbitral institutions in Portugal (2,000 more than in 2022).[1]

There are three levels of judicial jurisdiction in Portugal: first instance courts, second instance courts and the Supreme Court. At first instance, there are specialised courts for specific matters, such as civil, criminal, commercial, labour, family, competition and intellectual property rights. The Appeal Court of Lisbon also created specialised and autonomous sections for appeals concerning specific matters such as commercial, competition and intellectual property rights litigation.

Since the length and duration of judicial proceedings are still the main problem of dispute resolution in Portugal, during recent years, the state has been actively amending the legal system. To address the growth of judicial litigation and to improve the effectiveness and the level of specialisation of the courts and judges, the state has not only implemented procedural rules but also improved its infrastructure (building new courts and implementing new technologies) and modified the structure of the judicial organisation. Progress has been made and the duration of declarative proceedings has decreased significantly from an average of 20 months in 2013 to an average of 11 months in 2022.[2]

However, some courts are particularly slow and it is not uncommon for complex cases to last several years in the first instance level and for appeals on the merits, when these imply a review of the facts of the case, to last up to 12 months.

Year in review

The year 2024 was not very productive in terms of new developments in legislation that was accentuated by the parliamentary elections that took place in March 2024 and the new government taking office. However, there were a few important legislative amendments to the judicial system, particularly in matters of civil and criminal proceedings.

Additionally, improvements made in terms of the trends of digital access to courts and pending proceedings continue.

Previously, only the parties to proceedings had digital access and they could submit pleadings electronically only for civil proceedings pending in the first instance courts. However, since 2018, all judicial proceedings, including those pending in appeal courts, are digitally available except during the pretrial stage of criminal proceedings. Since 2019,[3] the Civil Procedure Code has established that trials may be recorded by video or audio and witnesses may be heard by videoconference from different locations (i.e., not from the court of their place of residence), such as the premises of the municipality or district where a witness lives. In addition, citizens may consult court cases, obtain information,

request certificates and file documents or pleadings in any court (i.e., it need not be the court hearing the case).

Recently there have been further developments with the publication of Order 266/2024/1 of 15 October, that extended the rules on electronic processing to cases and procedures pending before the Public Prosecutor's Office. Furthermore, Decree-Law 91/2024 of 22 November and Decree-Law 87/2024 of 7 November was approved, implementing the electronic service of summons and notifications to procedural parties and incidental interveners (either natural or legal persons) in legal proceedings, by making them available in a digital area reserved for the recipient, associated with their email address. These measures are expected to decrease costs, promote a more efficient and expedited resolution of conflicts, and bring citizens closer to the judicial system.

As a result of the covid-19 pandemic, it has become increasingly more common to have witnesses, experts and lawyers attend court hearings through platforms such as Microsoft Teams or Cisco Webex. These means of communication have continued to be used by the courts from April 2021 to date, and the situations in which they are used are becoming less exceptional.

Litigation costs have continuously increased in recent years. According to the Litigation Costs Regulation, parties involved in court proceedings are obliged to pay court fees. The exact amount to be paid depends on the value of a claim, which means that the higher the value of the claim, the more court fees will be charged. However, in cases where the value of the claim is above €275,000, the losing parties may request the court to relieve them of the payment of a large percentage of the court fees. The high cost of litigation has been under discussion and the government may take some measures to make the cost more reasonable and fair. In particular, on 21 February 2024, the Portuguese Constitutional Court declared the unconstitutionality, with general binding force, of the rule that imposes the obligation to pay the remainder of the court fee (i.e., the remainder of the court fee when the value of the claim is above €275,000) on the defendant who has fully won the case, and stated that the defendant shall ask for the amount it has paid in part costs.

The Insolvency Law was amended (and came into force on 20 May 2012) to introduce fast-track court approval procedures for restructuring plans, which have proved to be successful. In particular, the special recovery procedure seeks to provide borrowers with some leeway in negotiating recovery plans with their creditors in the event of imminent insolvency.

The insolvency legal framework was recently significantly amended once again to transpose Directive (EU) 2017/1132, which establishes measures to support and expedite corporate restructuring processes and payment arrangements. It was further amended in 2024 to foresee that the service of legal persons is, as a rule, effected by electronic means.

Another important legislative innovation was the implementation of the Anti-Corruption Legislative Package, which consists of a number of new measures to prevent economic and financial crimes. The most significant developments were Law No. 94/2021 of 21 December, the Whistleblowing Law,[4] and the General Regime for Prevention of Corruption.[5] In particular, the Whistleblowing Law transposed Directive (EU) 2019/1937 and governs the general rules on the legal protection of whistle-blowers in respect of infringements of EU law. In addition, the General Regime for Prevention of Corruption established the obligation for companies with 50 or more employees to adopt a code

of conduct (principles, values and rules of action in matters of professional ethics and disciplinary sanctions for failure to comply with them) and a risk prevention plan (areas of activity and actions with a risk of corruption and related infringements, the probability of these occurring, and preventive and corrective measures to reduce this probability). On 6 June 2023, the government published Order No. 155-B/2023, declaring the establishment of the National Anti-Corruption Mechanism (MENAC), as an independent administrative body with the mission of promoting transparency and integrity in the conduct of public office and guaranteeing the effectiveness of policies to prevent corruption and related offences. In 2023, 72 crimes of corruption and 104 crimes of money laundering were recorded in Portugal.[6]

These amendments are in line with the strategies of the European Union and the Portuguese government to strengthen measures for the prevention of corruption and economic crimes in the same vein; for example, Law No. 79/2021 of 24 November 2021 transposed into national law Directive (EU) 2019/713 regarding fraud and counterfeiting of non-cash means of payment.

Another important development has been the ongoing improvement and strengthening of the Portuguese legal system regarding the protection of victims of crimes against sexual freedom, namely the publication of Law No. 45/2023 of 17 August, which extended the deadline for filing a complaint and initiating criminal proceedings from six months to one year. This improvement is also evident in Law No. 51/2023 of 28 August, which sets out the criminal policy objectives, priorities and guidelines for the 2023–2025 biennium and also from the Law 4/2024 of 15 January, which finished the transposition of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and proposals to extend the scope of the crime of discrimination and incitement to hatred and violence, and of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017, on the fight against fraud to the Union's financial interests by means of criminal law. Additionally, in 2024 the Portuguese government also approved the National Strategy for the Rights of Victims of Crime for the years 2024 to 2028, which aims to ensure that crime is prevented and that effective responses are found to all situations of victimisation, without neglecting the specific needs of particularly vulnerable victims, particularly in the field of violence against women, domestic violence, gender-based violence, ill-treatment of children and young people, human trafficking, discrimination based on sexual orientation, gender identity and expression and sex characteristics, and discrimination based on racial or ethnic origin.

Court procedure

Overview of court procedure

Both civil and criminal proceedings include different stages. Generally, proceedings are initiated by the parties submitting pleadings, followed by a stage in which evidence is provided. The Civil Procedure Code establishes that all witnesses must be indicated in the claim at the time it is submitted, even though the initial list may be later supplemented. Subsequently, the court establishes the object and the controverted factual topics of the case and the trial takes place, with the examination of the witnesses and final oral closing

statements, before the court issues its decision. Finally, provided that specific conditions are met, the parties can appeal the judgment.

Procedures and time frames

There are two kinds of civil proceedings: declarative and enforcement. Through the former, the court's decision has *res judicata* effect. According to the Civil Procedure Code currently in force, the court decides on issues raised by the parties. The court may take decisions on facts that were not raised by the parties only if those facts are instrumental, complementary or noticeable. The court can convict a defendant only to the extent required by a claimant and cannot adjudicate*ultra petita*.

Enforcement proceedings may serve three purposes:

1. the payment of an amount;
2. the delivery of a specific object; or
3. forcing the counterparty to carry out a certain action.

These enforcement proceedings are filed based on an enforcement title that can be a previous court decision or certain documents established at law (e.g., some contracts, mortgages or deeds, provided that the documents are signed before a notary public[7] or certified by the same, and also cheques).

Usually, it takes one to three years for a final court decision to be issued in ordinary declaratory proceedings, while enforcement proceedings tend to take from one to two years.

To avoid damage resulting from a delay in court decisions and to ensure the effectiveness of a final decision, claimants may request that the court issues adequate preliminary injunctions, which are urgent proceedings that can take from two to six months.

The above-mentioned time frames are merely indicative, as proceedings may be longer or shorter depending on the workload of the court with which the claim is filed and the particular circumstances of the case, as well as the arguments put forward.

Since 2014, it has been possible to launch pre-enforcement extrajudicial proceedings[8] that allow the claimant to verify whether the defendant has any attachable assets before filing a claim.

Unlike civil proceedings, where the parties play a major role (although courts play an increasingly important role under the new Civil Procedure Code), in criminal proceedings, the court has total control of the case and the duty to seek the truth. In this respect, the court may order the execution of any proceedings required to uncover the truth. Generally, ordinary criminal proceedings in Portugal take almost two years, but in specific cases, such as white-collar crimes, proceedings tend to take longer. Once again, the duration of the proceedings provided here is also merely indicative.

Class actions

The Portuguese Class Actions Act was enacted by Law No. 83/95, of 31 August. It establishes an opt system, granting all citizens, individually or through relevant organisations, the right to initiate class actions, within the terms established therein, for the purpose of preventing, terminating or judicially persecuting infringements against public health, consumer rights, quality of life and the preservation of the environment and cultural heritage, as well as guaranteeing the defence of state property, the property of the autonomous regions or of the local authorities (e.g., municipalities).

Class or group proceedings can be brought by individuals, associations and foundations created for the defence of relevant interests (regardless of their direct interest in a case), and by local authorities in the interests of the residents in their area.

Although previously they were not very common in Portugal, the number of class actions filed by retail investors, or associations on behalf of retail investors, for the protection of the investors' homogeneous individual or collective interests in financial instruments, and popular actions filed by the consumer associations with the purpose of ensuring consumer safety and protection, including follow-on private enforcement class actions, has increased significantly in the past few years, to the point where Portugal has become one of the most active European jurisdictions in this field.

Recently, Decree-Law No. 114-A/2023 of 5 December transposed into national law Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020, which establishes the regime applicable to national and cross-border class actions – brought on the grounds of infringements by professionals of the provisions of national and Union law that harm or are likely to harm the collective interests of consumers – for the protection of consumers' rights and interests. This Decree-Law broadens the list of requirements for legitimacy to file a class action relating to the independence of associations and foundations and the financing of class actions by third parties. With regard to the establishment of a procedural mechanism for class actions at an EU level, Decree-Law No. 114-A/2023 provides for the possibility for qualified entities designated by other Member States to bring cross-border class actions to Portuguese national courts. Furthermore, this Law also foresees that consumers who are not habitually resident in Portugal at the time the class action is filed will have to express their will to be represented, in order to be bound by its outcome. Finally, the aforementioned Decree-Law establishes that class actions brought by a plaintiff who has entered into a financing agreement with a third party where at least one of the defendants in the proceedings is a competitor of the third-party funder or is an entity on which the third-party funder depends are not admissible.

Representation in proceedings

In civil proceedings, parties must be represented by a lawyer whenever the value at stake exceeds €5,000 or when the proceedings are taking place before the higher courts.

In criminal proceedings, individuals considered formal suspects must be assisted and represented by a lawyer at several stages. Therefore, the assistance of lawyers is mandatory during interrogation, trial and appeal, among other matters. As regards the representation of victims, specific procedures must also be carried out with the assistance of lawyers, such as filing personal claims or appeals. Conversely, witnesses may also be assisted by lawyers but only to ensure that they know their rights.

Service out of the jurisdiction

Pursuant to the Civil Procedure Code, when a defendant's domicile is located outside the Portuguese jurisdiction, the initial summons or other notices requesting attendance to court will be served by post, by means of a registered letter with acknowledgement of receipt, unless applicable international treaties or conventions provide otherwise.

Other notices will be served to the lawyer appointed by the party. Service of judicial and extrajudicial documents in civil and commercial matters within the European Union is governed by Council Regulation No. 1393/2007 of 13 November,[9] in which the particular formalities are set out, especially concerning the obligation to serve notice through the public authorities of the addressed state and to comply with specific rules of the relevant jurisdiction.

In criminal proceedings, notices for parties whose domicile is outside the Portuguese jurisdiction will be served according to the rules set out in international treaties and conventions. Portugal is a party to the Convention on Mutual Assistance in Criminal Matters established between Member States of the European Union of 29 May 2000. Pursuant to this Convention, as a general rule, each Member State sends procedural documents directly to the persons who are in the territory of another Member State, by post.[10] In certain cases, however, the documents will be sent through the competent authorities of the requested Member State (e.g., if the procedural law of the state requires proof of service of the document on the addressee other than the proof provided by an ordinary letter). Portugal is also a party to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. Pursuant to this Convention, documents will be served by means of letters rogatory sent to the competent entities of the state concerned.

Enforcement of foreign judgments

Within the European Union, Council Regulation No. 1215/2012 of 12 December 2012 sets out the conditions under which a judgment (concerning civil and commercial matters) issued in a Member State can be enforceable in another Member State.

Therefore, pursuant to this Regulation, a judgment issued in a Member State and enforceable in that Member State may be enforceable in Portugal when, upon filing of a judicial application by the interested party, the court has recognised the enforceability of the judgment. The application of enforceability is filed before the competent superior court.

Without prejudice to the international conventions and treaties in force (e.g., the Lugano Convention), under Portuguese law, it is generally possible to enforce foreign civil judicial judgments upon a prior confirmation procedure before a Portuguese court.

This confirmation will be granted whenever:

1. there are no well-grounded doubts concerning either the authenticity of the submitted documents or the fairness of the decision;
2. the decision is final according to the law of the country where the judgment was rendered;
3.

the object of the decision does not fall within the exclusive international jurisdiction of Portuguese courts, and the jurisdiction of the foreign court has not been determined fraudulently;

4. there are no other pending proceedings between the same parties, based on the same facts and having the same purpose, and no ruling on the same case has been issued by a Portuguese court;
5. the defendant was duly notified of all the proceedings according to the law of the country where the judgment was rendered;
6. the foreign court proceedings complied with the procedural law requirements and each party received an adequate opportunity to present their case fairly; and
7. the acknowledgement of the decision is not patently incompatible with the public policy of the state.

Assistance to foreign courts

Portuguese courts can provide assistance to foreign courts when required by means of letters rogatory, unless the execution of the requested proceedings violates Portuguese public policy, the letter rogatory is not duly legalised, the execution of the requested proceedings compromises national sovereignty or security, or the execution of the requested proceedings leads to the execution of a foreign court decision subject to confirmation by the Portuguese courts.

Access to court files

The Civil Procedure Code, as a general rule, provides that court files may be accessed by the parties, lawyers or any person with a relevant interest in the proceedings; however, the examination of court records is more restricted when the disclosure of information may cause damage to a person's dignity or privacy, is contrary to public values (e.g., adoption or divorce proceedings) or may harm the effectiveness of the decision to be issued by the court, such as, for instance, in interim application proceedings. According to a recent amendment to the Civil Procedure Code, access to a case file may be restricted in compliance with the General Data Protection Regulation (GDPR) if the personal data derived from the proceedings is not relevant for the subject matter of the dispute.

In addition, the Criminal Procedure Code, as a general rule, provides that parties and lawyers are allowed to access the court records. Nevertheless, the examination of court records at the investigation stage always requires the public prosecutor's or judge's authorisation. Third parties who have relevant interests in the proceedings may also request authorisation to access court files, unless the proceedings are confidential. This occurs whenever the public prosecutor or judge forbids the parties and their lawyers from accessing such records during the investigation stage, since their disclosure could interfere with the investigation or cause damage to any of the parties.

Litigation funding

Third-party litigation funding is not prohibited by Portuguese law and until recently was relatively unseen in the Portuguese litigation landscape.

The situation has changed dramatically since 2020, with the incorporation of a number of very belligerent private consumer protection associations, who have resorted to third-party funding to support a very significant number of class actions, including, as already mentioned, follow-on private enforcement proceedings related to consumer protection rights.

Until the entry into force of the above-mentioned Decree-Law No. 114-A/2023, of 5 December, there was no regulation or legislation on third-party funding in our jurisdiction.

According to Decree-Law No. 114-A/2023, plaintiffs who receive third-party funding must submit the financing agreement to the court along with:

1. a financial summary listing the sources of funding used to support the class action; and
2. the various costs and expenses to be borne by the third-party funder.

Additionally, according to this Decree-Law, the financing agreement must guarantee the independence of the plaintiff and the absence of conflicts of interest. Namely, the third party financing the class action may not impose, impede or influence in any way the decisions relating to the class action, including, in particular, the choice of legal counsel, the definition of the procedural strategy and the decisions to file, continue, withdraw, settle, appeal and, in general, carry out or not carry out any procedural act within the scope of the class action.

Furthermore, Decree-Law No. 114-A/2023 establishes that the third-party funder's remuneration must be a fair and proportionate amount, assessed in the light of the characteristics and risk factors of the class action and the market price of the financing, but does not foresee an exact limit. The remuneration of the third-party financing the class action is considered an expense incurred by the plaintiff and will be assessed by the court, after the final judgment, in joint proceedings.

While there is a very intense debate about independence and conflicts of interest created by third-party funding in most of the pending class actions in Portugal, courts have yet to rule on the matter.

Legal practice

Conflicts of interest and Chinese walls

Conflicts of interest are currently a central issue in the Portuguese legal system, which promotes the prevention or prohibition of any conduct that may lead to a lawyer or law firm having such a conflict.

The regime seeks both to protect and to promote the dignity and independence of a lawyer in his or her role as an active participant in the administration of justice and to ensure the relationship of trust that must be established between a lawyer and his or her client.

The main sources of law regarding conflicts of interests for lawyers are the Portuguese Bar Association Regulations (the Regulations), the regulations of law firms and the Criminal Code. These sources are complemented by the opinions and decisions of the Portuguese Bar Association. Finally, the provision of legal services in Portugal by lawyers from the European Economic Area is also subject to the Code of Conduct for Lawyers in the European Union, as approved by the Council of the Bars and Law Societies of Europe.

The Portuguese Bar Association is primarily responsible for supervising and ensuring compliance and enforcement of the law, and it has disciplinary power over its members. Decisions of the Bar Association can be appealed before the administrative courts. Furthermore, the courts are responsible for the enforcement of the law in any proceedings other than disciplinary proceedings.

Article 370.2 of the Criminal Code establishes that specific acts of misconduct relating to conflicts of interest by lawyers are criminal offences. Thus, a lawyer who has a conflict of interests and acts with the intention of harming his or her client will be penalised with either imprisonment of up to three years or a fine.

The Regulations establish the duties that lawyers are obliged to comply with in their relationships with clients. Article 99 deals specifically with possible causes of conflicts of interest, establishing several duties upon lawyers to prevent them.

A lawyer's wilful or negligent violation of the foregoing rules may give rise to disciplinary liability, which is independent of any potential civil or criminal liability.

Portuguese law is moving towards the exclusion of Chinese walls or firewalls as valid mechanisms to overcome limitations imposed upon law firms, but the practical application of the law has yet to be fleshed out by case law, opinions or decisions of the Portuguese Bar Association. While it is unlikely that new legislation on this subject will be approved, it is foreseeable that future decisions will provide detail and clarify the limits to be respected by lawyers and law firms.

Money laundering, proceeds of crime and funds related to terrorism

The European Parliament and the Council decided to create special rules to prevent and punish money laundering within EU territory. For that purpose, the relevant EU bodies passed two important directives: Directive 2005/60/EC and Directive 2006/70/EC.

The aforementioned Directives were transposed into the Portuguese legal system through Law No. 25/2008 of 5 July 2008. From this date on, financial institutions and a large number of service providers such as notaries and civil servants are, inter alia, bound not to participate in any suspicious or criminal activities relating to money laundering and to report such activities to the public prosecutor and the Unit of Financial Information.

The EU bodies have continued to produce new legislation regarding this matter in the form of Directive (EU) 2015/849 and Directive (EU) 2016/2258, which were partially transposed into Portuguese law by Law No. 83/2017, which revoked Law No. 25/2008 of 5 July 2008. The new Law is more extensive than its predecessor, as it is applicable to a larger number

of entities. Lawyers, among others, are now bound by the same duties not to participate in any suspicious or criminal activities relating to money laundering. In August 2020, Directives (EU) 2018/843 and 2018/1673 were transposed into Portuguese law by Law No. 58/2020, which amended Law No. 83/2017. The main amendments concern the potential use of alternative financing systems for criminal purposes (e.g., virtual currencies).

Obviously, confidentiality issues arise when legislators decide to extend obligations of this kind to service providers such as lawyers, who are bound by rules of secrecy.

The final wording of Draft Law No. 29/XV/1, entitled the 'Counterterrorism Law', is soon to be published and, among other things, seeks to increase the penalties for terrorism-related crimes, such as the financing of terrorism.

On 16 January 2023, Law No. 2/2023 was published, completing the transposition of Directive (EU) 2017/541 and amending the Counter-Terrorism Law, the Criminal Code, the Criminal Procedure Code and related legislation. In particular, Law No. 2/2023 amended Article 5-A of the Counter-Terrorism Law, which defines the crime of terrorist financing, clarifying that this type of crime is fulfilled even if the perpetrator does not know (1) what specific terrorist offence or offences the funds are intended for or will be used for or (2) whether the funds are intended for individual terrorists or terrorist groups. Additionally, the legislator has enshrined a very broad definition of the type of funds that can be traced to the crime of terrorist financing, including any assets, tangible or intangible, movable or immovable, regardless of how they were acquired, as well as legal documents or instruments in any form, such as electronic or digital, that prove ownership or other rights over the assets, including bank credits, travellers' cheques, bank cheques, money orders, shares, bonds and other securities, drafts and letters of credit. Finally, Law No. 2/2023 broadened the scope of the Counter-Terrorism Law, extending it to offences relating to a terrorist group, terrorist offences, offences relating to terrorist activities or terrorist financing committed outside of Portuguese territory, but for the benefit of a legal person established in Portuguese territory.

In comparison with 2021, in 2022, there was an increase from 63 cases of money laundering being completed in the trial phase to 85 and an increase in convicted defendants from 115 (of 229 accused) to 102 (of 228 accused).[11]

Data protection

On 25 May 2018, the GDPR entered into force and superseded the former Data Protection Directive.[12] Overall, the GDPR is applicable if the data controller (the organisation that collects data from EU residents) or processor (an organisation that processes data on behalf of the controller) or the data subject (the person) is established in the European Union. For the lawful and fair processing of personal data, unless the data subject has provided informed consent, the data can be processed only if one of the following grounds is met:

1. the data subject gives consent to the processing of their data;
2. the fulfilment of contractual obligations with the data subject or tasks requested by the data subject who is in the process of entering into a contract require the processing of their data;
3. compliance of the controller's legal obligations requires the processing of data;

4. the protection of the vital interests of a data subject or another individual requires the processing of data;
5. the performance of a task in the public interest or by a public authority requires the processing of data; or
6. the protection of the legitimate interests of a data controller or a third party, unless these interests are overridden by the interests of the data subject, requires the processing of data.

These general rules also apply to the activities of law firms that involve the processing, access or transfer of personal data. The GDPR was implemented in Portugal by Law No. 58/2019 of 8 August 2019.

Other areas of interest

Actions for damages regarding infringements of the provisions of competition law

On 5 August 2018, Law No. 23/2018 of 5 June 2018 entered into force, setting out the rules governing actions for damages for infringements of the competition law provisions and transposing Directive 2014/104/EU into the Portuguese legal system.

According to this Law, the infringements that may give rise to an action for damages for infringements to the competition law provisions are as follows:

1. the prohibition of agreements and conduct that restrict competition;
2. the prohibition of the abuse of a dominant position; or
3. the prohibition of the abuse of economic dependence.

This Law provides special rules for compensation for competition law infringements that facilitate the application of competition law for disputes arising between individuals (private enforcement). This source of enforcement of competition law is independent from the enforcement promoted by public entities such as the Competition Authority or the European Commission, with a sanctioning purpose (public enforcement).

Other relevant provisions of this Law include:

1. the joint liability of co-infringers (with some limitations regarding small and medium-sized companies or leniency applicants);
2. the joint liability of infringers and the parent companies;
3. the wide access to evidence to support a possible compensation request (except for cases involving leniency applications or transactions);
4. the implementation of a new period of limitation of five years for these compensation actions;
5. the establishment of a specialised court to decide on disputes regarding action exclusively based on claims for damages arising under the infringement of competition law;

6. the possibility to resort to class action; and
7. the incentive to resort to extrajudicial forms of ADR.

The Portuguese Competition Authority has been especially active and has imposed fines for violations of competition rules (e.g., in December 2020, retail sector companies, including four supermarket chains and two beverages suppliers, were fined €303 million for concerted practices). Therefore, the number of private enforcement class actions is expected to increase greatly in the future.

Also as expected, the increasing attention on private enforcement has had a substantial impact on private enforcement litigation in Portugal, resulting in an increasing number of pending actions for damage compensation.

In this context, since 2022, and during 2023 and 2024, a few judgments were issued in a stream of highly important cases regarding the truck manufacturers that were fined by the EU Commission, making these the first of many decisions regarding this and other EU Commission sanctioned cases. Furthermore, four Court of Appeal decisions have also been issued on the truck manufacturers proceedings, which overturned three first instance court judgments and one was maintained. As such, the direction of Portuguese case law regarding this particular matter is still unclear.

Documents and the protection of privilege

Privilege

The Portuguese legal system acknowledges that some professions of social importance cannot exist without confidentiality, as people feel comfortable disclosing personal or troubling facts only if they are certain that those facts will remain secret.

In light of the above, lawyers, priests, doctors, journalists, chartered accountants, civil servants, public officials and corporate bodies of financial institutions, among others, have, in broad terms and as established by law, the right not to testify in court or not to comply with orders issued by any private or public entities to disclose or provide information or documentation, whenever the disclosure concerns facts or documents relating to their professional activity.

In some cases, this prerogative also entails special protection against searches and seizures. For instance, searches inside law firms must be conducted by a judge, unlike most other cases where the presence of the district attorney suffices. Evidence obtained in criminal matters pursuant to illegal searches or seizures will be considered void and illegitimate in court.

Notwithstanding this, the scope of protection granted under Portuguese law differs according to a professional's particular practice. Priests and lawyers, for instance, benefit from a broader and stricter protection, while employees and corporate bodies of financial institutions do not. In fact, while financial secrecy can easily be waived with the consent of the interested client, the disclosure of facts by lawyers always depends on the intervention of the Portuguese Bar Association.

However, privilege is not an absolute right and, in most cases, excluding religious matters, it is possible to break it, albeit through a complex procedure. The key rule on this issue is found in Article 135 of the Portuguese Criminal Procedure Code, which establishes that only superior courts may decide whether privilege should be broken and, consequently, force the disclosure of protected facts.

The existence of this rule does not jeopardise the general protection granted to professional privilege in Portugal, as the superior court's decision must always be taken according to the principle of the most important prevailing interest, which binds the court to, among other matters, consider the seriousness of the crime and the interests pursued in the criminal procedure.

The application of this principle has driven courts to decide that, for instance, it is not permissible to break privilege to investigate minor offences.

Although Portuguese law widely respects this privilege, in recent years, there have been some troubling court decisions limiting the scope of the privileged protection of lawyers.

Finally, under Portuguese law, the scope of rights and duties granted to Portuguese lawyers applies to any foreign lawyers as long as they comply with the Portuguese Bar Association's procedures. Under these conditions, foreign lawyers are also subject to the rules of privilege.

Production of documents

When a party seeks to gain access to a document held by the other party, it may request the court to order the production of the document within a particular term. If the order is ignored, the court may consider the party's refusal for probative value and impose the reversal of the burden of proof.

There are, however, some documents that parties do not have to produce in litigation, such as correspondence between a lawyer and a counterparty or between the parties' lawyers themselves. Furthermore, in relation to the latter, this cannot be considered as evidence by the courts. In relation to correspondence between the lawyer and the counterparty, this is also considered to be privileged and a protected professional secret. In these cases, the party can claim a lawful excuse. The court may deny the lawful excuse only if it decides that the document is indispensable for the statement of facts and if the importance of the case overrides the requirement for the protection of professional secrecy. This statutory regime is also applicable to state secrets and to civil servants.

When a relevant document is held by a third party (e.g., a parent company), a party may request a court order for the third party to produce it.

Foreign deeds have the same legal standing as those executed in Portugal, provided that certain legal conditions are duly complied with. Note that signature of an official deed by a public official has to be formally recognised by a Portuguese diplomatic or consular agent in the relevant state, and this signature has to be certified with the relevant consular seal. In addition, in judicial acts, documents must be written in Portuguese. Therefore, when a required document is stored overseas, it must be translated and duly certified.

The rules applicable to electronic documents are substantially the same as those applicable to any other document. In all cases, the law sets out several restrictions on the

production of documents in relation to general correspondence, letters or any other type of mail, which are protected by law, based on the principles of the protection of privacy. Furthermore, the Constitution expressly forbids any intrusion into correspondence from the authorities. In conclusion, if a party is notified to produce correspondence in court that does not relate to the case in question, it can claim this legal protection. However, there is an exception in the Constitution and in the Criminal Procedure Code relating to authorised police searches.

If a party is asked to produce electronic documents that are no longer accessible, that party can argue that it is unable to do so. Nevertheless, in criminal proceedings, judges may order a search of the home or other premises of the defendant, in which case, evidence may be obtained from backups or through the reconstruction of deleted documents.

Alternatives to litigation

Overview of alternatives to litigation

The greatest flaw of the Portuguese legal system is the length of time that proceedings take. According to the latest data from the Portuguese National Institute of Statistics, the average duration of a civil action at trial is 11 months (which represents a positive development compared with past statistics).[13] Civil appeals take approximately three months.[14]

In light of the foregoing, both the wider civil society and the government have been encouraging the promotion of ADR, namely arbitration, mediation, conciliation and resolution by justices of the peace. In 2001, the government created the Cabinet for Alternative Dispute Resolution, a department of the Ministry of Justice exclusively dedicated to ADR.

In 2024, Decree-Law no. 26/2024, of 3 April (amended by Decree-Law 56/2024 of 10 September), created the RAL+ Platform, an IT platform designed to serve the management and operation of the different means of alternative dispute resolution, including arbitration, meditation, justice of peace courts and consumer arbitration. This platform is managed by the Ministry of Justice.

Arbitration

In recent years, arbitration has been flourishing in Portugal. Parties have progressively added arbitral clauses to contracts, and there is a general sense that Portugal may become a privileged forum for arbitration between companies based in Portuguese-speaking countries such as Brazil, Angola and Mozambique.

On 15 March 2012, a new Law on Arbitration entered into force,[15] replacing the former Portuguese Arbitration Law.[16]

The Arbitration Law is rather innovative, drawing inspiration from the 2006 version of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the UNCITRAL Model Law), and it introduces

provisions intended to grant more flexibility with regard to the formal validity of an arbitration agreement, making it simpler to comply with the written form requirement.

It is now legitimate to state that the Law has increased flexibility in Portuguese arbitration and facilitated the inclusion of an increasing number of arbitral clauses in contracts.

Among its most important innovations, the Arbitration Law:

1. contains a major change in the analysis of arbitrability;
2. expressly sets out that not only are independence and impartiality required for the appointment of arbitrators but also arbitrators must comply with those requirements throughout proceedings;
3. regulates the most important aspects of the application of interim measures, closely following the UNCITRAL Model Law;
4. includes the regulation of multiparty arbitration and third-party intervention; and
5. provides that an award will not be subject to appeal, unless otherwise expressly established by the parties in the arbitration agreement (without prejudice to the applicable procedures to set aside the award, which cannot be waived in advance).

The leading Portuguese arbitral centre is the Arbitration Centre of the Portuguese Commercial Association. Law No. 74/2013 of 3 September 2013 created the Sports Arbitration Court, which became operative in October 2015.

As regards foreign arbitration, Portugal is party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; however, although Portuguese jurisprudence is arbitration-friendly (narrowly interpreting the grounds for refusal of recognition or enforcement of foreign arbitral awards), an interested party may also appeal against a decision of the first instance court that recognises or declares a foreign arbitral award enforceable before the Supreme Court, provided that the aforementioned requirements as to the value of the action are met. Thus, parties should always seek adequate guarantees to secure fulfilment of the contracts they enter into or to secure compensation for the breach of such contracts.

Tax arbitration is becoming increasingly common, and some decisions have already been handed down.

In addition, consumer arbitration proceedings have increased following the transposition of the EU ADR Directive[17] by Law No. 144/2015 of 8 September 2015. Furthermore, the creation of an Information, Mediation and Consumer Arbitration Centre in the Azores was recently authorised.

In 2023 alone, 14,746 claims were brought before an arbitration court, and only 3,978 were pending.[18]

Mediation

Law No. 29/2013 of 19 April establishes general principles applicable to mediation in Portugal, as well as measures regarding civil and commercial mediation, mediators and

public mediation regimes. The Law filled a lacuna where there was previously no specific law or act governing mediation and conciliation.

The Law has introduced important provisions establishing that any dispute regarding property issues or any rights that may be the subject of transactions by parties may be submitted to mediation.

Another important provision establishes that private mediation settlement agreements are, under specific circumstances, enforceable directly, without the need to obtain from a court or the obligation to execute extrajudicial settlements in mediation centres supervised by the Ministry of Homologation Justice.

The specific circumstances are as follows:

1. the settlement's object must be able to be mediated and not subject to a mandatory court decision;
2. parties must have capacity to execute the settlement;
3. the settlement must have been reached through mediation and according to law;
4. the content of the settlement must not violate Portuguese public policy; and
5. the settlement must be reached with the intervention of a mediator included on the Ministry of Justice's public list of mediators.

The Mediation Law also includes provisions on the training, duties and rights of mediators, as well as the rules applicable to public mediation frameworks.

Despite the Mediation Law, in Portugal, mediation and conciliation settlement agreements are traditionally negotiated between the parties' attorneys, in the majority of cases, during pending lawsuits. Parties are usually very reluctant to use mediation and conciliation. Most settled public mediation claims related to family matters.

Other forms of ADR

In addition to arbitration, mediation and conciliation, the most popular form of ADR is conducted by a justice of the peace, as governed by Law No. 78/2001 of 13 July 2001 (as amended by Law No. 54/2013 of 31 July 2013, which broadened the scope and jurisdiction of justices of the peace), and numerous centres have been created under the supervision of a special commission. Justices of the peace are available to settle disputes only between individuals, and they have jurisdiction on civil matters concerning small claims (up to €15,000). Under the new legal framework on justices of the peace, legal persons may now resort to mediation (except in class actions), and preliminary injunctions are now available.

In 2024 alone, 7,354 claims were distributed to this type of alternative dispute resolution, and 7,354 were completed.[19] Judges of peace must have a law degree but need have no further legal education.

The Portuguese Supreme Court has held that the jurisdiction of justices of the peace is concurrent with that of the courts.[20] While justices of the peace are proving useful in simple disputes, a strong suspicion still remains about the quality of their decisions on the merits of the cases concerned.

Outlook and conclusions

All in all, in the past year some changes have been promoted in our judicial system with an emphasis on increasing the system's efficiency, agility and overall responsiveness. The efficiency of judicial courts has been increasing these past few years. In particular, in 2023, the efficiency of first instance courts was 46.2 per cent, in the appeal courts was 83.5 per cent and in Supreme Court was 79.2 per cent.[21] In turn, the resolution rate in 2023 of first instance courts was 102.5 per cent, while that of the appeal courts was 97 per cent.[22]

As in 2023, financial and banking litigation proceedings is still one of the most significant areas of litigation, with several new legislative novelties, and one of the subjects that is keeping the Portuguese courts occupied. In particular, in 2024 an important decision was issued by the first instance Competition, Regulation and Supervision court regarding an administrative offence applied by the Competition Authority against 14 banking institutions, the fines for which amount to €225 million. This decision is not final, as it was appealed by the defendants, but it is already generating private enforcement proceedings.

During 2023, the number of proceedings initiated before Portuguese courts increased, compared to 2022, from 484,189 to 505,868, while the number of cases closed, decreased from 525,661 in 2022 to 505,870 in 2023. The number of pending cases in 2023 was similar to 2022, with 588,616 cases.[23]

Endnotes

1 This statistical analysis was carried out by the Portuguese Directorate-General for Justice Policy and is available at https://estatisticas.justica.gov.pt/sites/siej/en-us/Pages/Processos_centros_arbitragem.aspx. ^ Back to section

2 See statistics on the duration of judicial proceedings in Portugal since 2006 at https://estatisticas.justica.gov.pt/sites/siej/en-us/Pages/Duracao-media-de-processos.aspx. ^ Back to section

3 Decree-Law No. 97/2019 of 26 July. ^ Back to section

4 Law No. 93/2021 of 20 December 2021. ^ Back to section

5 Decree-Law No. 109-E/2021 of 9 December 2021. ^ Back to section

6 See these statistics at https://estatisticas.justica.gov.pt/sites/siej/en-us/Pages/Temas/CriminalidadeJusticaPenal.aspx. ^ Back to section

7 Before the new Civil Procedure Code entered into force (on 1 September 2013), private documents signed by the debtor were considered to be an enforceable title. Under the new provisions of the Civil Procedure Code, this was deemed no longer to be the case. On 23 September 2015, the Constitutional Court held that it was unconstitutional for these provisions to operate retroactively regarding private documents. Thus, private documents signed before 1 September 2013 still constitute an enforceable title (Judgment No. 340/2015). ^ Back to section

8 Law No. 32/2014 of 30 May 2014 and Ministerial Order No. 233/2014 of 14 November 2014. ^ Back to section

9 As amended by Council Regulation No. 17/2013, 13 May 2013. ^ Back to section

10 Article 5. ^ Back to section

11 Statistics available at https://estatisticas.justica.gov.pt/sites/siej/en-us/Pages/Branqueamento_capitais.aspx. ^ Back to section

12 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). ^ Back to section

13 See statistics on the duration of judicial proceedings in Portugal since 2006 at https://estatisticas.justica.gov.pt/sites/siej/en-us/Pages/Duracao-media-de-processos.aspx. ^ Back to section

14 Statistics available at https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/Duracao-media-dos-processos-findos-nos-tribunais-jud ^ Back to section

15 Law No. 63/2011 of 14 December. ^ Back to section

16 Law No. 31/86 of 29 August 1986. ^ Back to section

17 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR). ^ Back to section

18 This statistical analysis is available at https://estatisticas.justica.gov.pt/sites/siej/en-us/Pages/Processos_centros_arbitragem.aspx. ^ Back to section

19 This statistical analysis is available at https://www.conselhodosjulgadosdepaz.com.pt/relat_estatisticas.asp. ^ Back to section

20 Decision No. 11/2007 of 24 May 2007. ^ Back to section

21 This statistical analysis was carried out by the Portuguese Directorate-General for Justice Policy and is available at https://prod2.pordata.pt/portugal/taxa+de+eficacia+nos+tribunais+(percentagem)-918?_gl=1*17j94ou*_up*MQ..*_ga*MTA1NjA3NDczOC4xNzM4NjY5MjQx*_ga_HL9EXBCVBZ*MTczODY2OTI0MC4xLjAuMTczODY2OTI0MC4wLjAuMA. ^ Back to section

22 This statistical analysis is available at https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/tribunais.aspx. ^ Back to section

23 This statistical analysis was carried out by the Portuguese Directorate-General for Justice Policy and is available at https://prod2.pordata.pt/portugal/tribunais+judiciais+processos+entrados++findos+e+pendentes-247?_gl=1*172sb5m*_up*MQ..*_ga*MjA4MTYwNTc5My4xNzM4NjY5NjQw*_ga_HL9EXBCVBZ*MTczODY2OTY0MC4xLjAuMTczODY2OTY0MC4wLjAuMA. ^ Back to section

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