



European
Commission

European network of legal experts in
gender equality and non-discrimination

Country report

Non-discrimination

Portugal

2026

including summary



Justice
and Consumers

EUROPEAN COMMISSION

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality and Non-Discrimination
Unit D1: Non Discrimination: LGBTIQ, Age, Horizontal Matters
Unit D2: Non Discrimination: Anti-Racism and Roma Coordination

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Portugal

Dulce Lopes and Joana Vicente

Reporting period 1 January 2025 – 1 January 2026

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2026

© European Union, 2026

PDF ISBN 978-92-68-38753-5 ISSN 2599-9176 doi: 10.2838/5057733 DS-01-26-079-EN-N

CONTENTS

EXECUTIVE SUMMARY	5
INTRODUCTION	15
1. GENERAL LEGAL FRAMEWORK	18
2. THE DEFINITION OF DISCRIMINATION	21
2.1 Definition of the grounds of unlawful discrimination within the directives	21
2.2 Multiple and intersectional discrimination	24
2.3 Assumed and associated discrimination	26
2.4 Direct discrimination (Article 2(2)(a))	27
2.5 Indirect discrimination (Article 2(2)(b))	28
2.5.1 Statistical evidence	28
2.6 Harassment (Article 2(3))	31
2.7 Instructions to discriminate (Article 2(4))	34
2.8 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)	35
3. PERSONAL AND MATERIAL SCOPE	42
3.1 Personal scope	42
3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)	42
3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)	42
3.1.3 Private and public sector including public bodies (Article 3(1))	43
3.2 Material scope	44
3.2.1 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))	44
3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	46
3.2.3 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	46
3.2.4 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))	47
3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	47
3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)	49
3.2.7 Education (Article 3(1)(g) Directive 2000/43)	50
3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)	55
3.2.9 Housing (Article 3(1)(h) Directive 2000/43)	58
4. EXCEPTIONS	61
4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)	61
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)	61
4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)	63
4.4 Nationality discrimination (Article 3(2))	63
4.5 Health and safety at work (Article 7(2) Directive 2000/78)	65
4.6 Exceptions related to discrimination on the grounds of age (Article 6 Directive 2000/78)	65
4.6.1 Direct discrimination	65
4.6.2 Special conditions for younger or older workers	67
4.6.3 Minimum and maximum age requirements	68

4.6.4	Retirement.....	69
4.6.5	Redundancy	71
4.7	Further exception necessary in a democratic society: Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)	72
4.8	Any other exceptions.....	72
5.	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)	73
6.	REMEDIES AND ENFORCEMENT	77
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	77
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78).....	82
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)..	86
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78).....	89
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78).....	89
7.	BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)	98
7.1	National equality bodies.....	98
7.2	Political, economic and social context of the designated bodies	102
7.3	Institutional architecture.....	103
7.4	Status of the designated bodies – general independence and resources.....	104
7.5	Grounds and fields covered by the designated bodies	107
7.6	Competencies of the designated bodies – and their independent exercise ..	107
7.7	Legal standing of the designated bodies	109
7.8	Dispute resolution.....	110
7.9	Procedural safeguards	112
7.10	Data collection by the designated bodies	112
7.11	Roma and Travellers	113
8.	IMPLEMENTATION ISSUES.....	114
8.1	Dissemination of information, dialogue with NGOs and between social partners	114
8.2	Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)	117
9.	COORDINATION AT NATIONAL LEVEL.....	119
9.1	Coordination at the governmental level	119
9.2	National strategies and action plans	119
10.	CURRENT BEST PRACTICES.....	125
11.	SENSITIVE OR CONTROVERSIAL ISSUES	127
11.1	Potential breaches of the directives at the national level	127
11.2	Other issues of concern	127
12.	LATEST DEVELOPMENTS IN 2025.....	129
12.1	Legislative amendments	129
12.2	Case law.....	129
	ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS	130

EXECUTIVE SUMMARY

1. Introduction

Portugal has a long tradition of contact with other cultures and peoples. Due to the experience of Portuguese emigration to Brazil and Latin America in general, as well as to other countries in Europe such as France and Germany in the 1960s, the Portuguese were traditionally used to ethnic, racial and religious diversity.¹

More recently, however, political and social change has been transforming the faces of discrimination in Portugal. Modifications in 2025 to the Law on Immigration (Law 23/2007 of 4 July) and proposed changes to the Law on Nationality (Law 37/81 of 3 October) have shown that, at a political level, there is now less tolerance towards migrants and their integration into Portuguese society. The Constitutional Court has issued relevant decisions on these cases (Decision 785/2025,² which considered some of the rules of Law 23/2007 to be unconstitutional, and Decision 1133/2025,³ which deemed some of the proposed changes to the Law on Nationality also to be unconstitutional). However, there were several dissenting opinions from judges, demonstrating the lack of consensus in the area. Finally, regarding loss of nationality due to criminal convictions, Decision 1134/2025 of the Constitutional Court considered that there was a breach of the equality principle between nationals, depending on the mode of acquiring nationality.⁴

Immigration movements to Portugal have played a role in Portuguese demographics for a long time. In 2021, according to the final result of the census there were 542 165 foreign citizens (both EU and non-EU nationals), representing 5.2 % of the total Portuguese population, of whom 82.4 % are non-EU nationals.⁵ According to the *Report on Migration and Asylum 2025*, the number had reached 1 543 697 by the end of 2024. This number is nearly quadruple the total of 421 802 foreign residents registered as of year-end 2017.⁶ However, according to Social Security data, 32 300 registered workers left Portugal in 2023 and 45 000 in 2024, the highest number in nine years. The number of foreign workers entering Portugal dropped from 20 000 workers in 2023 to 12 000 in 2024.⁷

In Portugal, racist or fascist political parties are forbidden.⁸ However, since the end of 2019, a far-right party, Chega, has been represented in Parliament. In the latest

¹ In 2020, the Migrant Integration Policy Index (MIPEX) ranked Portugal third in terms of most favourable migrant integration policies (<https://www.mipex.eu/portugal>). In 2025, MIPEX placed Portugal third in the European Union regarding anti-discrimination policies (www.mipex.eu/key-findings-2025). In 2022, Portugal published a report on the National Implementation Plan of the Global Compact for Migration, a document that takes stock of the progress made since 2020, including some relevant achievements

(www.acm.gov.pt/documents/10181/27754/Relatório+Nacional+Voluntário+IMRF+2022.pdf/f0bba73c-ee90-4098-97f7-728e5f41a082). However, in the study by Alice Ramos and Pedro C. Magalhães (2021), 'Os Valores dos Portugueses – Resultados do European Values Study', *Gulbenkian Studies*, vol. 1, it is shown that Roma, along with drug addicts and alcoholics, are considered as a group that is not welcomed as neighbours (e-book available at: <https://gulbenkian.pt/publication/os-valores-dos-portugueses/>). More recently, the Online Report by Catarina Reis Oliveira (2023), *Indicadores de Integração de Imigrantes – Relatório Estatístico Anual 2023*, Observatório das Migrações, depicts the situation in Portugal until 2022 (e-book available at: https://numeros.justica.gov.pt/sites/default/files/2026-03/Indicadores_de_Integra%C3%A7%C3%A3o_de_Imigrante_2023.pdf).

² See <https://www.tribunalconstitucional.pt/tc/acordaos/20250785.html>.

³ See <https://www.tribunalconstitucional.pt/tc/acordaos/20251133.html>.

⁴ Available at: <https://www.tribunalconstitucional.pt/tc/acordaos/20251134.html>.

⁵ See Instituto Nacional de Estatística (2022), *Censos 2021. O que nos dizem os Censos sobre a população de nacionalidade estrangeira residente em Portugal*, available at: <https://www.inec.pt/xurl/pub/66196836>.

⁶ Available at: <https://aima.gov.pt/media/pages/documents/fec4d6a712-1760603125/relatorio-migracoes-e-asilo-2024.pdf>.

⁷ See https://www.dn.pt/economia/trabalhadores-imigrantes-abandonam-portugal-nmero-de-sadas-aumenta-40#google_vignette and <https://www.bportugal.pt/publicacao/boletim-economico-dezembro-2025>.

⁸ Portuguese Constitution, Article 46(4); Organic Law 2/2003, on political parties, 22 August 2003 (last amended by Organic Law 1/2018, 19 April 2018), Article 8, available at: https://www.parlamento.pt/Legislacao/Documents/Legislacao_Anotada/LeiPartidosPoliticos_Anotado.pdf.

parliamentary elections in 2024, the party strongly increased its share of the vote from 12 (2022) to 50 seats. The rhetoric used by representatives of the far-right party Chega who reportedly rely heavily on antigypsyism, islamophobia, anti-Black racism and xenophobic sentiments to garner public support, has become a significant cause of concern. In 2025, a group of six Roma filed a lawsuit against André Ventura, the leader of Chega, due to the placement of posters by the defendant with the words 'Gypsies must comply with the law', accompanied by a photograph of the defendant and the inscription 'André Ventura, Presidential Elections 2026'. The Court considered that the implicit but unequivocal message behind the posters was of a discriminatory nature and that the restriction to the freedom of expression was justified by an imperative social need.⁹

While there is a lack of official and disaggregated data on incidents of hate speech in Portugal, several reports point to a sharp rise of hate speech in the country.

The 2025 *ECRI Report on Portugal*¹⁰ highlights the rise in hate speech, predominantly targeting migrants, Roma, LGBTIQ and Black people, sometimes involving neo-Nazi groups, online hate speech and the divisive and inflammatory discourse used by some politicians.

The findings of the 5th edition of the #MigraMyths - Demystifying Immigration project¹¹ indicate a growing social perception that hate speech against migrants in Portugal has increased and become more violent. Regarding the most prevalent forms of perceived hate speech, xenophobia was the most frequent, accounting for 80.4 % of cases, followed by racial hatred at 10.4 %.

Crimes involving discrimination and incitement to hatred and violence have risen by more than 200 % over the last five years, according to justice statistics.¹² A total of 421 cases were recorded in 2024, marking the year with the highest number of occurrences. Incidents related to far-right movements have also been increasing.¹³

No conflicts have been reported between religious groups.¹⁴ However, as the majority of the population is Catholic,¹⁵ other religions face greater problems in practice, for example in ministering to people in hospitals and prisons. In addition, meals in public schools are still not completely adapted to meet the needs of other religions, in particular those of

⁹ Decision of the Judicial Court of Lisbon of 22 December 2025, proc. 27699/25.2T8LSB, commented on in the flash report available at <https://www.equalitylaw.eu/downloads/6487-portugal-decision-of-the-judicial-court-of-lisbon-of-22-december-2025-proc-27699-25-2t8lsb>.

¹⁰ See <https://rm.coe.int/sixth-report-on-portugal/1680b6668d>.

¹¹ See https://home-affairs.ec.europa.eu/document/download/6f4a28fb-720f-4ae9-b793-8b6172d62e38_pt.

¹² See <https://www.publico.pt/2025/06/18/sociedade/noticia/crimes-incitamento-odio-violencia-aumentaram-200-cinco-anos-2137029#>.

¹³ See <https://www.dn.pt/sociedade/o-mosaico-da-extrema-direita-radical-em-portugal-14-grupos-no-radar-das-autoridades>.

¹⁴ Hate speech in Portugal can also take the form of anti-Muslim hate speech. For example, in February 2024, several ultranationalist and far-right groups organised a march against the so-called Islamisation of Europe, which was scheduled to take place in neighbourhoods in Lisbon with large Muslim and migrant populations. The holding of the demonstration at these locations was prohibited by the Mayor of Lisbon, on the recommendation of the Public Security Police, considering the serious risk of violence against the population. The prohibition was challenged in court, but was upheld. The demonstration took place in a different location. The 2025 *ECRI Report on Portugal* also notes with concern the increase in antisemitic hate speech in the country following the Hamas terror attack of 7 October 2023 and Israel's subsequent war in Gaza.

¹⁵ According to the results of the 2021 Census, the number of Catholics in Portugal fell by 8.1 %, from 88.3 % in 2011 to 80.2 % in 2021. The census also indicates that there are 6.6 % more people without religion. It is important to say that the question regarding religion in the census was of an optional nature, but obtained a response rate of 97 % (<https://rr.pt/noticia/religiao/2022/11/23/censos-2021-portugal-tem-menos-catolicos-e-mais-pessoas-sem-religiao/309270/>).

Islam.¹⁶ In November 2025, the Portuguese Parliament approved in general¹⁷ a bill prohibiting the use of the burqa in public spaces.¹⁸ The legislative approval process for this measure is currently ongoing. The measure has sparked debate in Portugal around its discriminatory nature regarding the intersection of gender and religion.

Portuguese society is not yet fully aware of the issues involved in the field of age discrimination and is only slowly becoming aware of their implications¹⁹. However, individuals are beginning to invoke age discrimination before the courts and before equality bodies, emphasising the need for age discrimination to be adequately considered. Political discourse is also starting to be sensitive to age discrimination as demonstrated by the discussion surrounding age discrimination resulting from the pardon of penalties and amnesty for offences on the occasion of World Youth Day held in Portugal, established by Law No. 38-A/2023 of 2 August 2023.²⁰

Regarding discrimination on the grounds of disability, the National Institute for Rehabilitation (INR) registered 257 complaints on the grounds of disability or aggravated health risk in its most recently available annual report (for 2024),²¹ which represents an increase compared with the previous year's figure of 201. The subject with the highest incidence of complaints was related to the refusal of access to goods and services (11.38 %, n=28), followed by the refusal or limitation of access to public or private educational establishments, as well as a lack of support for the specific needs of students with disabilities (9.35 %, n=23). As a general trend, however, the 2025 human rights indicators for people with disabilities in Portugal provided by the Disability and Human Rights Observatory have shown some progress.²²

The Observatory of Discrimination against LGBTI+ People registered 469 reports of incidents of discrimination and violence between 2020 and 2022, half of them related to 'insults or threats'.²³

¹⁶ Since education has become mainly a municipal competence, some municipalities with a relevant immigrant community such as Odivelas have started to introduce halal meals in school canteens (See: <https://odivelashoje.pt/2022/02/24/municipio-de-odivelas-pioneiro-na-entrega-de-refeicoes-halal-nas-escolas/>).

¹⁷ Bills from Parliament usually undergo a three-stage process: first they are generally adopted (votação na generalidade) and afterwards they are adopted by specific commissions (votação na especialidade) before the final global vote (article 168 of the Portuguese Constitution).

¹⁸ For more on the legislative process, see <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=315166>.

¹⁹ In 2024, a collective study was published on Understanding Ageism in the Workplace, funded by the Fundação Francisco Manuel dos Santos. It includes a very comprehensive and comprehensible analysis of ageism, its causes and effects (available at: https://ffms.pt/sites/default/files/2024-08/Idadismo_4as%20-%20web%20%281%29.pdf).

²⁰ See the flash report available at: <https://www.equalitylaw.eu/downloads/5920-portugal-age-discrimination-and-pardon-of-penalties-and-amnesty-for-offences>. See, among other decisions, the Decision of the Oporto Court of Appeal of 20 March 2024 (proc. 3198/19.0JAPRT.P1), the Decision of the Lisbon Court of Appeal of 20 February 2024 (proc. 2033/22.7PFLSB.L1-5), Decision 471/2024 of the Constitutional Court of 19 June 2024, Decision 808/2024 of the Constitutional Court of 7 November 2024 and Decision 898/2024 of the Constitutional Court of 11 December 2024. All of these courts considered that there was no discrimination regarding citizens between 16 and 30 years (the beneficiaries of such clemency measures) and older citizens.

²¹ See <https://www.inr.pt/documents/11309/1040915/Relat%C3%B3rio+-+Lei+da+N%C3%A3o+Discrimina%C3%A7%C3%A3o+2024/a665129a-9484-4b83-bf59-2136522ef38a>.

²² See <https://oddh.iscsp.ulisboa.pt/publicacoes/publicacoes-oddh-pt/relatorio-pessoas-com-deficiencia-em-portugal-indicadores-de-direitos-humanos-2025/>.

²³ See <https://www.publico.pt/2023/10/10/p3/noticia/ilga-recebeu-469-denuncias-incidentes-pessoas-lgbt-2066149#>; <https://ilga-portugal.pt/denunciar-a-discriminacao/observatorio-da-discriminacao/>.

2. Main legislation

The Portuguese Constitution²⁴ includes a specific general clause on the principle of equality.²⁵ Article 13(1) states that ‘all citizens possess the same social dignity and are equal before the law’, and Article 13(2) establishes a general anti-discrimination clause under which:

‘No one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.’

This enumeration is not exhaustive, and other grounds such as age and disability are protected, as will be seen in section 1 of this report. The Constitution develops these principles in its chapters on workers’ rights, freedoms and guarantees and on economic, social and cultural rights.

Furthermore, Portugal has ratified several international human rights treaties – see Annex 1 to this report.

With regard to domestic legislation, the general statute related to non-discrimination issues is Law 93/2017 of 23 August 2017,²⁶ which establishes the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin within the scope of social protection, including in social security and healthcare, social benefits, education, access to and the supply of goods and services that are available to the public, including housing and culture.

Law 38/2004 defines the general legal basis for the prevention of the causes of disability, and the training, rehabilitation and participation of persons with disabilities.²⁷ Law 46/2006²⁸ prohibits and punishes discrimination based on disability and on a pre-existing risk to health (*risco agravado para a saúde*).

With regard to employment, Law 7/2009 of 12 February 2009,²⁹ which approves the Labour Code, transposes, among many other directives, Directive 2000/43/EC (the Racial Equality Directive) and Directive 2000/78/EC (the Employment Equality Directive).

Article 24 of the Labour Code prohibits discrimination, notably, on the grounds of ancestry, age, sex, sexual orientation, gender identity, civil status, family situation, economic situation, education, origin or social condition, genetic heritage, reduced capacity for work, disability, chronic illness, nationality, ethnic origin or race, territory of origin, language, religion, political or ideological convictions and trade union affiliation.

Law 3/2011, which transposes into national law Directives 2000/43/EC, 2000/78/EC and 2006/54/EC, is relevant since it prohibits any discrimination in access to and the exercise of self-employment and provides legal standing to associations to intervene in labour, administrative and judicial procedures.³⁰

²⁴ An English version of the Constitution can be consulted on the website of the Portuguese Parliament (www.parlamento.pt).

²⁵ Portuguese Constitution, Article 13.

²⁶ Law 93/2017, 23 August 2017, available at: <https://dre.pt/application/conteudo/108038372>.

²⁷ Law 38/2004, 18 August 2004, available at: <http://dre.pt/pdf1s/2004/08/194A00/52325236.pdf>.

²⁸ Law 46/2006, 28 August 2006, available at: <https://dre.pt/application/dir/pdf1sdip/2006/08/16500/62106213.pdf>.

²⁹ Law 7/2009, 12 February 2009, available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1047&tabela=leis.

³⁰ Law 3/2011, 20 February 2011, available at: <https://dre.pt/application/dir/pdf1s/2011/02/03200/0080900811.pdf>.

Article 240 of the Criminal Code³¹ covers discrimination based on colour, racial, ethnic or national origin, ancestry, religion, gender, sexual orientation, gender identity and physical or mental disability, language, gender expression and sexual characteristics. This provision has been amended by Law 4/2024 of 15 January 2024.³²

To sum up, the anti-discrimination directives are transposed by legislation adopted with the specific purpose of transposition. Beyond this legislation, discrimination is prohibited in various other statutes, as well as in codes such as the Labour and the Criminal Codes.

3. Main principles and definitions

The principle of equality and non-discrimination is a main principle of every state that upholds democracy and the rule of law; thus it applies in Portugal. National law defines several operational concepts of anti-discrimination law in order to facilitate their application by judicial and administrative bodies.

Direct³³ and indirect³⁴ discrimination are prohibited and defined in national law. The definitions comply with those in the directives.

Since 2017, Law 93/2017 also prohibits discrimination based on association with persons with particular characteristics (association with persons of a particular racial and ethnic group, colour, nationality, ancestry or territory origin). According to Article 3(d) of Law 93/2017, discrimination by association occurs as a result of a relationship and/or association with a person or group of persons who holds a protected characteristic.³⁵ However, the same cannot be said, at least explicitly, regarding other grounds of discrimination.

In Portugal, discrimination based on an assumption of a person's characteristics is not expressly prohibited in national law; however, the interpretation of Portuguese anti-discrimination law is broad enough to cover this type of discrimination.³⁶

Harassment is defined and prohibited by the Criminal Code, the Labour Code, Law 93/2017 and Law 3/2011. However, the definitions are not identical. The Criminal Code covers conduct related to sexual harassment (Articles 163 and 164) and stalking (Article 154-A). In Law 93/2017 only harassment based on discriminatory factors is relevant, while the Labour Code defines both sexual or moral harassment, based or not on prohibited characteristics. The definitions of the Labour Code and Law 93/2017 comply with the directives.

Instructions or orders to discriminate are dealt with as discrimination under Article 23(2) of the Labour Code, Article 3(3) of Law 93/2017, Article 5(1) of Law 46/2006 and Article 5(3) of Law 3/2011.

In Portugal, multiple discrimination is prohibited in Law 93/2017 (Article 3(1)(e) and Article 4(1)). According to these provisions, multiple discrimination is discrimination that

³¹ Criminal Code, approved by Decree-Law 48/95, available at:

www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis.

³² This amendment has substituted the term 'race' with 'ethnic-racial origin' and has added the grounds of language, gender expression and sexual characteristics.

³³ Article 3(1)(b) of Law 93/2017, Article 3(a) and Article 4 of Law 46/2006, Article 23(1)(a) of the Labour Code and Article 5(2)(a) of Law 3/2011 are the main provisions that define direct discrimination.

³⁴ Article 3(1)(c) of Law 93/2017, Article 3(b) of Law 46/2006 of 28 August 2006, Article 23(1)(b) of the Labour Code and Article 5(2)(b) of Law 3/2011 are the main provisions that define indirect discrimination.

³⁵ Law 93/2017, 23 August 2017, Articles 3(1)(d) and 4(1).

³⁶ Academic literature argues, on this behalf, that the duty to interpret national legislation according to the directives and the CJEU judgments should lead to a revised interpretation of Article 25 of the Labour Code (see Rouxinol, M. (2023) 'Igualdade e não discriminação nas relações laborais' in: João Leal Amado, Milena Rouxinol, Joana Nunes Vicente, Teresa Coelho Moreira and Catarina Gomes, *Direito do Trabalho – Relação Individual* 2nd ed., p. 265).

results from a combination of two or more discriminatory factors. In this case, the Law adds that an objective justification of the behaviour must exist in relation to all those factors for the action not to be discriminatory.

By contrast, intersectional discrimination is not explicitly prohibited by law. The notion of multiple discrimination only refers to additive multiple discrimination in which the specific discriminatory factors are individually identified. The National Plan Against Racism and Non-Discrimination 2021-2025 establishes intersectionality as one of its four main principles, but does not define it. Decree-Law No. 41/2023 refers to intersectionality under the scope of the newly created Agency for Integration, Migrations and Asylum I.P. (AIMA), in Article 8(a). Intersectional discrimination is expressly mentioned in an organic law for the first time, but it is still a theoretical reference, since no specific provisions detailing what an 'intersectional approach' should look like exist.

The only ground of discrimination that is clearly defined by law is disability. Law 38/2004 defines disability with particular care and clearly establishes a principle of non-discrimination on the ground of disability (Article 6). A person with disabilities is defined as:

'someone who, because of loss or irregularity, whether congenital or acquired, of bodily functions or structures, including psychological functions, has specific difficulties that are likely, in combination with environmental factors, to limit or hinder their activity and participation on equal terms with others'.³⁷

The definition of 'disability' in Portugal, however, goes beyond that strict concept of disability, as it also includes those with a pre-existing aggravated risk to their health.³⁸

The duty of employers to provide reasonable accommodation for persons with disabilities is included in the law, but is not defined. According to Article 86(2) of the Labour Code, the employer has an obligation to grant reasonable accommodation, if it does not require disproportionate expense.

4. Material scope

Anti-discrimination provisions cover all the fields listed in the directives, namely employment, social protection, social advantages, education, goods and services and housing.

Discrimination, notably on the grounds of ancestry, age, sex, sexual orientation, gender identity, civil status, family situation, economic situation, education, origin or social condition, genetic heritage, reduced capacity for work, disability, chronic illness, nationality, race or ethnic origin, territory of origin, language, religion, political or ideological convictions and trade union affiliation, is prohibited in employment and vocational training. With regard to employment, anti-discrimination provisions apply to both the public and private sectors.

Discrimination, notably on the grounds of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation, is also prohibited in relation to the exercise of any civil rights, liberties or social or cultural rights, in accordance with the Portuguese Constitution.

5. Enforcing the law

The Commission for Equality and Against Racial Discrimination (CEARD) is the equality body for racial or ethnic discrimination.

³⁷ Law 38/2004, 18 August 2004, Article 2.

³⁸ Law 46/2006, 28 August 2006, Article 1.

The Authority for Working Conditions (Autoridade para as Condições do Trabalho – ACT) is the entity responsible for promoting improved working conditions by ensuring compliance with labour regulations. Its work in enforcing anti-discrimination law is very important. However, this body has competence only in the employment field.

Victims of discrimination may address their complaints to any police authority, CEARD or ACT. In the case of a crime, the Public Prosecution Service will conduct the case in the criminal courts.

Associations are entitled to act on behalf of victims of discrimination. According to Article 12(1) of Law 93/2017, associations with the objective of combating discrimination based on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin have the right to engage in judicial procedures on behalf of the interested persons, with their consent. Trade unions and associations are entitled under national law (Labour Procedure Code) to act on behalf or in support of victims of discrimination. NGOPDs (Non-Governmental Organisations for Persons with Disability) are entitled to act on behalf of victims of discrimination according to Article 5(2) of Decree-Law 106/2013 of 30 July 2013,³⁹ which defines their statutory basis. Law 46/2006 also provides, in Article 15(1), that NGOPDs and all organisations that defend and promote the interests of persons with disabilities have the right to intervene in support of the interested party. It is worth mentioning that Article 23 of Law 107/2009 of 14 September 2009,⁴⁰ which approves the procedural rules for administrative offences in the areas of labour and social security, also grants trade unions legal standing to intervene in administrative proceedings in support of a worker.

National law also allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). According to Article 52(3) of the Constitution and Law 83/95, *actio popularis* is admissible in Portugal in both administrative and judicial procedures in respect of 'diffuse interests'. However, there is no long-standing tradition of using *actio popularis* in Portugal, although a recent case has allowed for it in the non-discrimination field.⁴¹

With regard to proof of discrimination, once some elements of proof of the existence of discrimination have been established, the burden of proof will shift, and the respondent has a duty to prove that the facts alleged are not discriminatory. This principle does not apply to criminal procedures or to actions in which, according to the law, it is the responsibility of a court or other jurisdiction to carry out the investigation. In practice, this principle has raised some difficulties in the courts.

Statistics, if available, can be used as evidence. They are considered as documents and can be subject to analysis by experts appointed by the parties or by the court. It is the responsibility of the court to evaluate the evidence resulting from the statistics. However, this is not widespread. There have been no cases in Portugal involving direct or indirect discrimination in which statistics have played a major role.⁴² The law is silent on the use of situation testing, and so far there has been no precedent for its use in Portugal.

Besides civil responsibility, criminal and administrative sanctions are available and applied in cases of discrimination to all five grounds of discrimination. However, in the view of the authors of this report, they are not sufficiently deterrent.

³⁹ Decree-Law 106/2013, 30 July 2013, available at: <https://dre.pt/home/-/dre/498708/details/maximized>.

⁴⁰ Law 107/2009, 14 September 2009, available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1154&tabela=leis.

⁴¹ Decision of the Administrative and Fiscal Court of Leiria of 7 November 2024, proc. 190/19.9BELRA.

⁴² For probatory difficulties in Portugal, see de Carvalho, P.M. (2015), 'Ónus da prova em caso de discriminação', *Direito e Justiça*, Vol. Especial, No. 3 pp. 109-136, available at: <https://revistas.ucp.pt/index.php/direitojustica/article/view/9959/9679>.

In Portugal, positive action is permitted, although it is not compulsory, in respect of racial or ethnic origin, religion or belief, age and sexual orientation. Quota law concerning disability is, however, compulsory.

The specific programme that addressed the needs of Roma people (the National Roma Communities Integration Strategy, applicable from 2013 to 2023) is no longer in force and has not been yet replaced. There is a specific section in the *Portugal + Equal – National Strategy for Equality and Non-Discrimination 2018-2030* for LGBTIQ people.⁴³

Social partners and NGOs are consulted regarding non-discrimination plans and legislation.

6. Equality bodies

Until October 2023, the High Commission for Migrations (HCM) (*Alto Comissariado para as Migrações* – ACM), assisted by CEARD, the Commission for Equality and Against Racial Discrimination, was the equality body for racial or ethnic discrimination. However, in October 2023, most of the HCM competencies were integrated in a newly created Agency, the Agency for Integration, Migrations and Asylum – AIMA (*Agência para a Integração, Migrações e Asilo*, I.P.), a public institute that absorbed some competencies of the HCM and the former Portuguese Foreigners and Borders Office (SEF).⁴⁴ However, the competencies arising from Law 93/2017, which establishes the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin, were attributed to the 'new' CEARD,⁴⁵ which has become an independent administrative authority functioning adjacently to the Portuguese Parliament. The new CEARD has been formally functioning since 4 December 2024 but its administrative support has still not been ensured. This has sparked controversy between the President of CEARD and the Secretary of the Portuguese Parliament about who is to blame about the impasse⁴⁶.

The Commission for Citizenship and Gender Equality (Comissão para a Cidadania e a Igualdade de Género – CIG) was established by Decree-Law 164/2007 of 3 May 2007 and is now governed by Regulatory Decree 1/2012 of 6 January 2012.⁴⁷ Its mandate is to ensure the implementation of public policies in the area of citizenship and the promotion and defence of gender equality (Article 2 of Decree-Law 164/2007 of 3 May 2007), and covers the following grounds of discrimination: gender, gender identity and sexual orientation.

The National Institute for Rehabilitation (Instituto Nacional para a Reabilitação – INR) is, according to Law 46/2006 of 28 August 2006 (Article 8(1)), the governmental office within the Ministry of Solidarity, Employment and Social Security responsible for policies and promotion of rights of persons with disabilities. Its mission is to ensure the planning, execution and coordination of national policies aimed at promoting the rights of persons with disabilities, and it also receives individual complaints and issues non-binding opinions on enquiries and disciplinary procedures within the public administration. Within Decree-Law 125/2017 of 4 October 2017, the physical accessibility of buildings was also included

⁴³ In May 2022, the Commission for Citizenship and Gender Equality (CIG) published a study entitled 'National study on the needs of LGBTI people and on discrimination based on sexual orientation, gender identity and expression and sex characteristics' (available at: https://www.cig.gov.pt/wp-content/uploads/2022/05/Estudo_necessidades_pessoas_LGBTI_discrimina_orienta_sexual_id_express_gen_ero_caractrstcs_sexuais.pdf).

⁴⁴ See Decree-Law 41/2023 of 2 June 2023, available at: <https://diariodarepublica.pt/dr/detalhe/decreto-lei/41-2023-213881448>.

⁴⁵ Law 3/2024 – available at: <https://data.dre.pt/eli/lei/3/2024/01/15/p/dre/pt/html>.

⁴⁶ See <https://www.publico.pt/2026/02/21/sociedade/noticia/bloqueio-comissao-racismo-presidente-nao-contratar-ar-alega-ja-nada-impede-2165484>.

⁴⁷ Regulatory Decree 1/2012 of 6 January 2012, available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1604&tabela=leis.

in the INR scope of competencies, and a commission for the promotion of accessibility was created to report on the status of accessibility in Portugal.⁴⁸

The Portuguese Ombudsperson, in its capacity of national human rights institution, fully in line with the Paris Principles, receives complaints of alleged violence and discrimination. It has established a telephone contact line for persons with disabilities, children and older persons.

Each of these bodies has its own mandate; however, cooperation mechanisms are established, mainly in regard to reporting. This might raise some difficulties in the appraisal of intersectional discrimination given the multiplication of different actors. However, CEARD seems to be the institution most suited to file those claims, as it is now an independent equality body, although it currently remains inoperative. CEARD also lacks a clear mandate to cover discrimination on the ground of racial or ethnic origin in the area of employment.

7. Key issues

The most important point to highlight is that Portuguese legislation and practice is, generally speaking, in accordance with the directives. There have not been many reports of cases of discrimination on the grounds of religion, disability or sexual orientation.

Regarding LGBTI+ issues, practices and individual experiences as highlighted in the EU LGBTIQ survey III, Equality at a Crossroads: Progress and Challenges of 2024,⁴⁹ and also in the latest *Laws On Us* publication, produced by ILGA in 2024,⁵⁰ show an increase in discrimination.

Regarding discriminatory harassment based on sexual orientation or gender identity and expression, according to the report produced by CIG (the Commission for Citizenship and Gender Equality)⁵¹ only seven complaints were reported in the context of moral and sexual harassment in the workplace in 2024. Among the total number of harassment complaints recorded by the CIG (7), 57 % correspond to situations of discriminatory harassment on the grounds of sexual orientation and 43% on the grounds of gender identity and expression. However, none of the complaints received in 2024 led to the opening of labour administrative proceedings against the employer, with information being received only upon initiation of disciplinary proceedings in the public sector, and as reported by the General Inspection and Finances and criminal proceedings in the private sector. The reasons presented for not reporting discrimination and harassment to the competent authority were fear of reprisals, distrust of the authorities, lack of knowledge and lack of evidence.

With regard to discrimination based on race or ethnicity, the current status of CEARD is a matter of serious concern. Although established by law, CEARD has not been functioning and has been in a state of paralysis. Since 29 October 2023, it has failed to uphold its core mandates, such as processing complaints and sanctioning discriminatory acts. Despite being officially 'instituted in practice' in December 2024, its activities remain unknown as of 1 January 2026. This ongoing ineffectiveness stems from the failure to establish its support services (at least up to the cut-off date of this report), leaving the body unable to apply sanctions or fulfil its reporting obligations. It is also not clear to what extent CEARD

⁴⁸ See reports available at: <https://www.inr.pt/relatorios-de-avaliacao-do-grau-de-acessibilidade>.

⁴⁹ Available at https://fra.europa.eu/sites/default/files/fra_uploads/lgbtiq_survey-2024-country_sheet-portugal.pdf.

⁵⁰ Available at https://ilga.org/wp-content/uploads/2024/05/Laws_On_Us_2024.pdf.

⁵¹ See Commission for Citizenship and Gender Equality (2024), 'Relatório de análise de denúncias apresentadas no âmbito do assédio moral ou sexual', https://www.cig.gov.pt/wp-content/uploads/2025/07/Relato%CC%81rio-asse%CC%81dio-OIEC-2024-consolidado_final_GabSecIgualdade_EF_com-logos_16_07_2025_GSEAJI_22_07_2025-Consolidado.pdf.

has a mandate to cover employment with regard to racial or ethnic origin, which amounts, at the cut-off date of this Report, to a potential breach of Directive 2000/43.

According to the 2025 *ECRI Report on Portugal*,⁵² there are still significant gaps in the fight against hate crimes in the legal framework and in the identification, recording and investigation of hate elements after complaints have been received. Furthermore, the report noted that the authorities' commitment to address the challenges faced by Roma has been insufficient, in particular in the area of housing.

The numbers of racial or ethnic origin cases – at least those cases publicised in the media – have been constantly increasing, which is a relevant issue of concern.

In Portugal, it is common to adopt legislation that is appropriate to achieve the required goals, yet which, due to several factors – such as the weakness of the economic situation, the burden on the public administration and courts and the feebleness of civic participation and litigation – does not function effectively and efficiently, which applies also to the implementation of anti-discrimination law.

Indeed, in Portugal, the culture of taking judicial action in courts, either judicial or administrative, against discriminatory practices is lacking. There are therefore few judicial decisions on such issues. There are three main reasons for this. Firstly, for all judicial procedures, victims have to instruct a lawyer and advance some funds. Secondly, the length, complexity and difficulty of obtaining evidence may act as a disincentive to victims seeking redress. Thirdly, the involvement of NGOs and other forms of collective redress are not yet common practice in the Portuguese judicial system. However, judicial actions and administrative complaints to administrative authorities are becoming more frequent.

Concrete issues of concern regarding artificial intelligence have not been identified, but the fear that this may happen (and the desire that it should be avoided) has been followed by several legal and policy measures. In the knowledge, however, that law is not enough, a European project to combat discrimination in the use of artificial intelligence in public administrations was launched in Portugal in 2024.⁵³

⁵² See <https://rm.coe.int/sixth-report-on-portugal/1680b6668d>.

⁵³ Further information is available at: <https://pessoas2030.gov.pt/2024/09/17/projeto-europeu-para-combater-discriminacao-no-uso-da-inteligencia-artificial-nas-administracoes-publicas/>.

INTRODUCTION

The national legal system

According to Article 1 of the Constitution of the Portuguese Republic of 1976, 'Portugal is a sovereign Republic, based on the dignity of the human person and the will of the people and committed to building a free, just and solidary society.' That means that the human being is the first priority of the state, above the economic and political organisation of the state.

According to Article 2 of the Constitution:

'The Portuguese Republic is a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and political organisation, respect for and the guarantee of the effective implementation of the fundamental rights and freedoms, and the separation and interdependence of powers, with a view to achieving economic, social and cultural democracy and deepening participatory democracy.'

The structure of the state is unitary with autonomous regions (Article 6(2)) and must respect the autonomous island system of self-government, the principles of subsidiarity, the autonomy of local authorities and the democratic decentralisation of the public administration (Article 6(1)). The political system is founded on the separation of effective powers (positive and negative) between the President, Parliament and Government, all of which possess identical democratic legitimacy.

The President of the Republic exercises effective positive and negative political powers, such as the appointment of the prime minister, the right of veto, the removal of the Government and the dissolution of the Assembly.

The Assembly of the Republic (Parliament) exercises legislative and political control powers (Article 149(1) of the Constitution). The Assembly of the Republic has exclusive legislative powers on some matters, and partially exclusive legislative powers on others. For instance, it has exclusive legislative powers with regard to rights, freedoms and guarantees, except where legislative power is delegated to the Government.

The Government conducts the country's general policy and is the supreme authority in the public administration (Article 182 of the Constitution). It also enjoys legislative powers on matters that are not within the exclusive mandate of the Assembly of the Republic, and on matters that are within the exclusive power of the Assembly but which the Assembly delegates to it.

Jurisdictional function is assured by the courts, which exercise sovereignty with the competence to administer justice in the name of the people (Article 202 of the Constitution). The control of what is constitutional and legal is multifaceted, and all courts (including the Constitutional Court) must not apply rules that contravene the provisions of the Constitution or the principles enshrined therein (Article 204 of the Constitution)⁵⁴.

The Portuguese Constitution also provides for an independent mediator body – the Ombudsperson – to whom citizens may present complaints about actions, or the inaction, of public powers. The Ombudsperson has no decision-making powers but may issue recommendations to the competent entities in order to prevent or repair any injustice (Article 23).

⁵⁴ On multiculturalism in the case law of the Constitutional Court, see Jerónimo, P. (2022), *A jurisprudência multicultural do Tribunal Constitucional português: Mapeamento e análise crítica*, JusGov research paper No. 15, University of Minho, available at <https://ssrn.com/abstract=4314470>.

Pursuant to Article 267(3) of the Portuguese Constitution, independent administrative authorities may be created. This is now the case in anti-discrimination law, since CEARD is now established as an independent administrative authority.

List of main legislation transposing and implementing the directives

Official title of the law: Law 93/2017 Abbreviation: N/A Date of adoption: 23 August 2017 Entry into force: 1 September 2017 Latest amendment: Law 3/2024, of 15 January Web link: https://dre.pt/dre/detalhe/lei/93-2017-108038372?ts=1666310400034 Grounds covered: racial and ethnic origin, colour, nationality, ancestry and territory of origin. Civil/administrative law Material scope: social protection, social assistance, education, access to goods and services, housing, health and culture. Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate, discrimination by association, and multiple discrimination and legal regime of administrative sanctions.
Official title of the law: Law 38/2004 Abbreviation: N/A Date of adoption: 18 August 2004 Entry into force: 23 August 2004 Latest amendment: N/A Web link: https://dre.pt/dre/detalhe/lei/38-2004-480708 Grounds covered: disability. Administrative law Material scope: general legal basis for prevention of the causes of disability, and the training, rehabilitation and participation of persons with disabilities. Principal content: fundamental principles, intervention of public and private entities; public policies.
Official title of the law: Law 46/2006 Abbreviation: N/A Date of adoption: 28 August 2006 Entry into force: 29 August 2006, except the provisions that have budgetary implications. Latest amendment: Law 75/2021, of 18 November 2021 Web link: https://dre.pt/dre/detalhe/lei/46-2006-540797 Grounds covered: disability. Civil/administrative/criminal law Material scope: employment, social protection, social assistance, education, access to goods and services, housing, health and culture. Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate, discrimination in employment, sanctions.
Official title of the law: Law 7/2009 Name used in this report: Labour Code Abbreviation: N/A Date of adoption: 12 February 2009 Entry into force: 1 May 2009 Latest amendment: Law 32/2025 of 27 March 2025 Web link: https://dre.pt/dre/legislacao-consolidada/lei/2009-34546475

Grounds covered: notably, ancestry, age, sex, sexual orientation, gender identity, civil status, family situation,⁵⁵ economic situation, education, origin or social condition, genetic heritage, reduced capacity for work, disability, chronic illness, nationality, race or ethnic origin, territory of origin, language, religion, political or ideological convictions and trade union affiliation.

Labour law

Material scope: private employment; public employment.

Principal content: prohibition of direct and indirect discrimination, harassment, instruction to discriminate.

Official title of the law: Law 3/2011

Abbreviation: N/A

Date of adoption: 15 February 2011

Entry into force: 20 February 2011

Latest amendment: N/A

Web link: <https://dre.pt/dre/detalhe/lei/3-2011-279786>

Grounds covered: any ground of discrimination.

Civil/labour/procedural law

Material scope: self-employment.

Principal content: forbids any discrimination in access to and exercise of self-employment.

⁵⁵ Family situation refers typically to cases where discrimination arises from birth or marriage status but it also covers other discriminations related to family ties. It should be read in accordance with the last segment of Article 14 of the European Convention on Human Rights.

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Portugal includes the following general provisions dealing with non-discrimination:

- Article 13 is a general clause on the principle of equality. Paragraph 1 enshrines the principle of equal treatment before the law and paragraph 2 prohibits discrimination founded on a large and, according to the dominant doctrine in Portugal,⁵⁶ non-exhaustive list of protected grounds ('ancestry, gender, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation').
- Article 15 of the Constitution establishes a principle of equivalence of rights and duties between foreigners and stateless persons and Portuguese citizens. According to this provision, foreigners and stateless persons who are temporarily or habitually resident in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens. Exceptions to this general rule are political rights, the exercise of public functions that are not predominantly technical and the rights and duties which, according to the Constitution or the law, are restricted to Portuguese citizens.
- Article 26(1) enshrines the right to legal protection against any form of discrimination. The Constitution thereby guarantees legal remedies for violations of any forms of discrimination.

In addition to these general principles and provisions, the Constitution includes, in the chapter on workers' rights, freedoms and guarantees, and a prohibition on dismissal without fair cause or for political or ideological reasons (see Article 53 on job security). In Title III on economic, social and cultural rights and duties, Article 59(1) of the Constitution forbids discrimination at work against any worker on grounds such as age, gender, race, citizenship, territory of origin, religion, or political or ideological convictions. Paragraph (2)(a) of the same Article refers to the principle of equal pay for equal work. Article 59(2)(c) of the Constitution refers to special protection of the work done by minors, persons with disabilities and those whose occupations are particularly strenuous or are undertaken in unhealthy, toxic or dangerous conditions.

Although Article 59(1) of the Constitution does not expressly refer to sexual orientation or to disability, it must be interpreted in connection with Article 13, which forbids discrimination on a list of grounds that is not exhaustive, according to the dominant doctrine.⁵⁷ This list can include the protection of other grounds, such as age and disability.

In Title III, which concerns economic, social and cultural rights and duties, the Constitution includes the right to the protection of health (Article 64(2)(a) and (b)). This right is universal. It is fulfilled by means of a universal and general national health service which, with particular regard to the economic and social conditions of the citizens who use it, tends to be free of charge, and by the creation of economic, social, cultural and environmental conditions that specifically guarantee the protection of childhood, youth and old age. The Constitution charges the state, as a priority, with the responsibility of

⁵⁶ See Gomes Canotilho, J.J. and Vital Moreira (2007), *Constituição Da República Portuguesa Anotada*, I (Artigo 1.º a 107.º), 4.ª ed., Coimbra Editora, p. 340; Martim de Albuquerque (1993), *Da Igualdade - Introdução a Jurisprudência*, Almedina, p. 76; Jorge Miranda and Rui Medeiros (2017), *Constituição da República Portuguesa Anotada*, Vol. 1, 2.ª ed., Universidade Católica Editora, p. 172.

⁵⁷ Supreme Court of Justice, judgment of 11 December 2011, No. 343/04.4TTBCL.P1.S1, available at: <http://www.dgsi.pt/JSTJ.NSF/954f0ce6ad9dd8b980256b5f003fa814/11aa12ab2447e05d80257935002d7e36?OpenDocument>. This judgment refers to other decisions that confirm that the equality and non-discrimination principles are 'substantively' impregnated and prohibit 'distinctions that have no material basis because they are based on mere subjective categories'.

guaranteeing every citizen, regardless of their economic situation, access to preventive, curative and rehabilitative medical care (Article 63(3)(a)).

Furthermore, Article 69(1), on childhood, provides that, with a view to their integral development, children have the right to protection by society and the state, especially from all forms of abandonment, discrimination and oppression. Article 70 on youth establishes that 'in order to ensure the effective fulfilment of their economic, social and cultural rights, young people shall enjoy special protection'.

Besides the general clause on non-discrimination enshrined in Article 13, the prohibition of discrimination on the ground of disability is explicitly provided for in Article 71(1) of the Constitution, which establishes that,

'citizens with physical or mental disabilities fully enjoy the rights and are subject to the duties enshrined in the Constitution, save for the exercise or fulfilment of those for which their condition renders them incapable.'

According to Article 71(2) of the Constitution, the state is obliged to have a national policy to prevent the causes of disability; to provide for the treatment, rehabilitation and integration of citizens with disabilities and to support their families; and to develop educational methods to raise society's awareness of the duty to respect and show solidarity towards citizens with disabilities. The state must assume responsibility for the effective exercise of the rights of those citizens, without prejudice to the rights and duties of their parents and guardians. Paragraph 3 of the same Article adds that 'the State shall provide assistance to organisations for citizens with disabilities'.

In addition, Article 72(1) and (2) of the Constitution, on elderly persons, states that 'the elderly have the right to economic security and to conditions in terms of housing and family and community life that respect their personal autonomy and avoid and overcome isolation or social marginalisation', and that 'the policy for the elderly shall include measures of an economic, social and cultural nature that tend to provide elderly persons with opportunities for personal fulfilment by means of an active participation in community life.'

Article 73(1) of the Constitution provides that 'everyone has the right to education and culture'. Article 73(2) states:

'The state shall promote the democratisation of education and the other conditions needed for an education conducted at school and via other means of training to contribute to equal opportunities, [and] the overcoming of economic, social and cultural inequalities.'

With regard to access to education, Article 74 of the Constitution states that 'everyone has the right to education with a guarantee of the right to equal opportunities for access to and success in schooling'. In education policies, the state must promote and support the access of persons with disabilities to education and, where necessary, support special education (Article 74(2)(g)). This constitutional provision aims to compensate for the inherent disadvantages that may be suffered by persons with disabilities in order to guarantee real equality of opportunity.

All provisions on specific rights should be read together with Article 13 of the Constitution, which enshrines the general clause on the principle of equality.

According to Portuguese constitutional case law, differences in treatment are considered acceptable when they are based on an objective distinction of situations, have legitimate

objectives in accordance with the principles of the Constitution and can be considered necessary, adequate and proportionate.⁵⁸

Some of these provisions are directly applicable, while others are not.

In order to clarify this question, one needs to draw attention to the fact that the Constitution makes a formal division between rights, freedoms and guarantees (civil and political rights) and economic, social and cultural rights. This distinction has some substantive consequences, given that the legal regimes of both groups of fundamental rights are rather different.

Article 18(1) of the Constitution establishes the legal force of the provisions on rights, freedoms and guarantees. It concerns the direct applicability of the provisions that enshrine rights, freedoms and guarantees and their binding effect on public and private persons and bodies. That means that all political and civil rights have binding effect over all public and private entities.

In contrast, the real effects of the constitutional provisions on social rights have been disputed since the very beginning of the Constitution's entry into force. On the one hand, Article 18 of the Constitution does not directly apply to them, and they usually depend on the adoption of ordinary laws that develop their constitutional contents. Therefore, some authors argue that these fundamental rights are binding only when special conditions are met (for instance, when sufficient administrative and financial resources are provided by the Government). On the other hand, according to an alternative doctrinal approach, although Article 18 of the Constitution does not apply to the binding effect of social rights, they are supposed to be similar to the rights, freedoms and guarantees in that respect. As a consequence, these fundamental rights are binding on the legislator, the executive and the courts. For people who make the latter argument, the main difference resides in the direct applicability, and not in the effectiveness and binding effect of the social rights – in summary, all fundamental rights must be effective and must have a binding effect. In spite of these differences, there is a consensus in the case law and in academia that the Constitution establishes a duty to pursue the full implementation of social rights, with reasonable delays, depending on public choices and resources, and always in a non-discriminatory way.

These provisions can, in some circumstances, be enforced against private actors as well as against the state. Where provisions on rights, freedoms and guarantees (see the explanation above) are implied, they are certainly binding on private actors. By contrast, where economic, social and cultural rights are concerned, their binding effect must be assessed case by case.

The enforcement of non-discrimination provisions against private actors has been disputed in education, mainly with regard to gender identity and sexual orientation non-discrimination clauses. It is indeed debatable – although no specific case has so far been decided in the courts – whether private schools (which are mostly religious) are bound to apply non-discrimination legislation regarding gender identity and sexual orientation.⁵⁹

⁵⁸ See, among many others, Constitutional Court Judgment No. 232/2003 of 13 May 2003, available at: www.tribunalconstitucional.pt/tc/acordaos/.

⁵⁹ There have been legislative attempts to regulate the obligations of both private and public schools with regard to the right to gender identity/expression and the protection of sex characteristics under Law 38/2018 of 7 August 2018. However, these attempts have failed – first because of the Constitutional Court's decision No. 474/2021 of 23 July 2021, and then because of a presidential veto on 29 January 2024.

2. THE DEFINITION OF DISCRIMINATION

2.1 Definition of the grounds of unlawful discrimination within the directives

a) Racial or ethnic origin

There is no legal definition for the notion of 'race'. However, Article 4 of Law 93/2017 sets out a large number of discriminatory practices that are forbidden. Some pieces of legislation refer to racial origin (e.g. Law 93/2017, Law 3/2011 and the Criminal Code); others use the term 'race' (Labour Code).

The definition of 'ethnic origin' is not provided in the legislation. However, the same provisions that refer to 'race' or 'racial origin' also mention ethnic origin.

In addition to ethnic origin or race, these provisions include nationality, territory of origin and language as suspect classifications, because they are covered in Article 13 of the Portuguese Constitution.

However, in the authors' view, the Portuguese courts would, if such a case was brought to court, decide in accordance with the definition of 'ethnicity' provided by the Court of Justice of the European Union (CJEU) in its *CHEZ* (C-83/14, Paragraph 46; ECLI:EU:C:2015:480) and 'Danish ghetto' (C-417/23, ECLI:EU:C:2025:1017) judgments.⁶⁰

b) Religion or belief

The term 'religion' is also not defined in national law. However, according to Law 16/2001 of 22 June 2001⁶¹ (the Law on Religious Freedom), 'religious purposes' are defined as the purposes of the 'exercise of worship or rites, religious assistance, training of ministers of religion, missionary work and dissemination of the professed denomination and religious education' (Article 21(1)(a)).

Although there is no case law on this issue, the definition of religion provided by the CJEU in *Achbita* (C-157/15, Paragraph 28) must be observed by Portuguese courts where it coincides with the definition followed by the European Court of Human Rights. In addition, in its jurisprudence,⁶² the Constitutional Court has emphasised that the protection that the Constitution gives to the freedom of religion encompasses both the individual and the collective exercise of religion. The first dimension guarantees a space of individual autonomy – reserved, intimate, very personal – of beliefs. The externalised subjective aspect of religious freedom gives people both the right to act freely in accordance with the respective convictions and beliefs in their relations with public authorities and others, and the possibility of freely engaging in activities that constitute manifestations and expressions of the religion they profess.

The term 'belief' is not defined in national law. However, the Constitution (Article 13) and other national legislation (Article 25 of Labour Code) prohibits discrimination on the basis of political or ideological beliefs. The term 'belief' is of a broader nature than religion and can include political and ideological opinions with a certain level of seriousness and importance.

⁶⁰ There has indeed been a legislative development in this area as, in the decision of the Constitutional Court on ethnicity (Decision 452/89), the word 'nomads' was considered to be a general concept not solely directed towards Roma people, and therefore not discriminatory. Decision available at: <https://www.tribunalconstitucional.pt/tc/acordaos/19890452.html>.

⁶¹ Law 16/2001, 22 June 2001, available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=806A0067&nid=806&tabela=leis&pagina=1&ficha=1&so_miolo=&nversao.

⁶² Constitutional Court, judgments No. 544/2014 and No. 545/2014, available at: <https://www.tribunalconstitucional.pt/tc/en/acordaos/20140544s.html>.

c) Disability

In contrast, Law 38/2004 of 18 August 2004,⁶³ which is not an anti-discrimination law, expressly defines a person with disabilities, in Article 2, as

‘someone who, because of loss or irregularity, whether congenital or acquired, of bodily functions or structures, including psychological functions, has specific difficulties that are likely, in combination with environmental factors, to limit or hinder their activity and participation on equal terms with others.’

This definition is also relevant for the purposes of non-discrimination law, as, according to the rules and principles of legal interpretation, all provisions must be interpreted in a systematic way. In fact, as there is no definition of disability in the Labour Code, some academic literature uses the definition of disability provided in Law 38/2004 for the purposes of determining who is protected from disability discrimination. The definition is also in accordance with the concept used in the CJEU’s judgment of 11 April 2013 in *Ring and Skouboe Werge* (joined cases C-335/11 and C-337/11; ECLI:EU:C:2013:222). However, due to the lack of jurisprudence in this context, it is impossible to provide any evidence base for this.

Article 6 of Law 38/2004 refers to the principle of non-discrimination as follows:

‘A person shall not be discriminated against either directly or indirectly, by act or omission, on the basis of his/her disability (...). A person with disabilities should benefit from all measures of positive action with the aim of ensuring the exercise of his/her rights and duties, correcting the present situation of inequality that persists within society.’

This also applies to people discriminated against on the grounds that they had a disability in the past or that they will acquire one in the future (discovered, for instance, through genetic testing). Indeed, according to article 2 of Law 38/2004, “A person with a disability is defined as someone who, due to a congenital or acquired loss or abnormality of bodily functions or structures—including psychological functions—experiences specific difficulties that, in combination with environmental factors, may limit or hinder their ability to engage in activities and participate on an equal basis with others”.

The law recognises that persons with disabilities do not constitute a homogenous group and that specific measures must therefore be taken in order to meet their different needs.

Law 46/2006, which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, and complements Law 38/2004, must also be taken into consideration. This Law states that its provisions are binding on all individuals and legal entities, private or public, and goes beyond the directive in the sense that it protects not only persons with disabilities but also persons with an aggravated risk to their health (Article 3(b)). Although there is no definition of disability in this piece of legislation, Law 46/2006 contains a definition of ‘persons with an aggravated risk to health’. According to Article 3(c) (amended by Law 75/2021 of 18 November 2021), a person with an aggravated risk to health is:

‘any person or persons suffering from an illness or disease causing long-term organic, functional, progressive and potentially disabling health changes, and causing changes to the physical, mental, emotional, social or economic quality of life of such persons, and that may be a cause of early-years disability or of significant reduction in life expectancy’.

⁶³ Law 38/2004, 18 August 2004, defining the general framework of the legal regime regarding disability prevention, available at: <https://dre.pt/application/file/480649>.

This covers situations in which the person has no disability as of yet, but has a health problem that could develop in a way that might result in a disability in future.⁶⁴

Decree-Law 290/2009 of 12 October 2009⁶⁵ established the employment and skills assistance programme for persons with disabilities (PEAQPDI) and approved the scheme providing technical and financial assistance for the development of employment and skills assistance policies for persons with disabilities. According to Article 4 of Decree-Law 290/2009, a person with disabilities and incapacity 'is an individual who presents significant limitations in terms of activity and participation in one or more life domains, arising from permanent functional and structural impairments, whose interaction with the surrounding environment results in ongoing difficulties regarding job acquisition, retention and career progression'. The statute also defines persons with disabilities, incapacity and reduced work capacity as 'individuals whose productive capacity is lower than 90 % of the standard capacity required of a worker in the same professional functions or position, due to structural and functional impairments and the resulting activity limitations'.

Within Law 75/2021 of 18 November 2021, which applies to insurance, the basic concepts for non-discrimination purposes are as follows: 'Persons who have overcome situations of aggravated health risk' (people who can be shown to have been in a situation of aggravated health risk and who are no longer in such a situation, after a therapeutic protocol has been carried out which has been shown to be capable of significantly and durably limiting its effects); 'Persons who have overcome their disability' (persons who can be shown to have been in a situation of disability of 60 % or more and who have recovered their psychological, intellectual, physiological or anatomical structures or functions, reducing their disability below this threshold); and 'persons who have mitigated aggravated health risks or disability' (persons who are undergoing treatment proven to limit significantly and durably the effects of their aggravated health risks or disability) (Article 2(a) to (c)).

It is worth noting that the Labour Code also prohibits discrimination on the ground of chronic illness, without defining this concept.

d) Age

With regard to the ground of age, the Constitution includes references to childhood (Article 69), youth (Article 70) and the third age (Article 72) without mentioning the specific ages that correspond to each status.

There are no restrictions on the scope of 'age' as a protected ground. There is no minimum age below which anti-discrimination law does not apply. There is no maximum age above which anti-discrimination law does not apply, which is important in preventing arguments and decisions based on ageism.

On the other hand, age can be used as a defence:

- in criminal cases. Criminal liability starts at 16 years of age, and special legislation applies to persons between 16 and 21 years of age.
- in civil cases. Article 488(2) of the Civil Code establishes a presumption of non-existence of civil liability for minors aged less than seven years.

e) Sexual orientation

There is no legal definition of sexual orientation.

⁶⁴ This provision refers to those who already have – are suffering from – an illness or disease (for instance cancer) and not to those who are predisposed to suffer from it at any given point in time.

⁶⁵ Available at <https://diariodarepublica.pt/dr/detalhe/decreto-lei/290-2009-491685>.

Some case law, although not defining directly what sexual orientation is, establishes some criteria for its establishment in concrete situations.

This is the case of the decision of the Constitutional Court of 2010 that did not consider as unconstitutional the legislation that allowed same-sex marriages.⁶⁶ In this decision, the Court ascertained that:

‘it is not necessary to make the concept of “sexual orientation” explicit or specific, namely as a “suspect category” for the purposes of the prohibition contained in Article 13(2) of the Constitution. The sexual orientation that is relevant in the context of the norm in question is the inclination towards union with a person of the same biological or genetic sex. In the context of the normative option under consideration, the morphological, psychological and social component of sexual identity and the consequent legal determination of gender loses problematic relevance’.

Therefore, the Court, despite basing its arguments in biologic or genetic sex, for the purpose of the case at hand, admits that other factors (morphological, psychological and social) might be relevant.

This can also be seen in cases regarding asylum proceedings. In this instance, the Administrative South Central Court, in its decision of 19 April 2018,⁶⁷ decided that:

‘sexual orientation and/or gender identity should be considered as innate and unchangeable characteristics or at least as characteristics so fundamental to human dignity that a person should not be forced to abandon them, and it is not a valid reason for denying international protection to consider that the applicant may be able to avoid persecution by hiding or being discreet about his or her sexual orientation or gender identity, nor may the applicant be required to alter or conceal his or her identity, views or characteristics in order to avoid persecution’.

2.2 Multiple and intersectional discrimination

In Portugal, multiple discrimination is prohibited in Law 93/2017 (Article 3(1)(e) and Article 4(1)).

According to these provisions, multiple discrimination is discrimination that results from a combination of two or more discriminatory grounds. However, Law 93/2017 does not establish more severe sanctions for multiple discrimination than for discrimination on individual grounds. The ‘old’ CEARD issued condemnatory decisions, some of them dealing with multiple discrimination, but from the authors’ analysis this has not had a clear reflection on the concrete sanctions applied in such cases.⁶⁸

Therefore, in Portugal multiple discrimination is not taken into account when deciding on discrimination cases (e.g. when imposing a sanction).

In Portugal, there are no judicial cases dealing with multiple discrimination.

In terms of administrative complaints and according to the last report produced by CEARD, during 2022, 6.5 % of the complaints received (a total of 32 out of 491) referred to multiple

⁶⁶ Constitutional Court, judgment No. 121/2010, available at: <https://www.tribunalconstitucional.pt/tc/acordaos/20100121.html>.

⁶⁷ Administrative South Central Court, judgment of 19 April 2018, proc. 2749/16.7BELSB. Available at: <http://www.dgsi.pt/jtca.nsf/-/BDE419A9CE9BDEC78025828900328342>.

⁶⁸ The list of decisions issued by CEARD is no longer available online.

factors of discrimination. Eighteen of those referred to the combination of nationality and colour of skin.⁶⁹

However, as stated in the report produced by CEARD (footnote 31 of the CEARD report) if a case of multiple discrimination is brought before CEARD and it results from a combination of discriminatory practices on the basis of factors (e.g. sex, sexual orientation, disability or others) not covered by Law No. 93/2017 of 27 August 2017, it will be deemed as 'incorrect' (inadmissible).

If multiple discrimination includes factors included in the scope of Law No. 93/2017 of 27 August 2017 (for instance ethnic origin and colour) and others that go beyond it (sexual orientation, for instance), only the part of the complaint related to that legislation will be considered (though articulation with other competent authorities in the specific case is possible).

In the authors' view, the definition of multiple discrimination in Portugal, encompassed in Law 93/2017, is too narrow and does not allow for the consideration of the 'multiplicity' of forms that multiple discrimination may assume.

In Portugal, intersectional discrimination is not explicitly prohibited by law. The notion of multiple discrimination only refers to additive multiple discrimination in which the specific discriminatory factors are individually identified. However, the National Plan Against Racism and Non-Discrimination 2021-2025, establishes intersectionality as one of its four main principles, but does not define it.⁷⁰ Also Resolution No. 92/2023, 14 August 2023,⁷¹ that adopted the action plans within the scope of the National Strategy for Equality and Non-Discrimination – Portugal + Equal, for the period of 2023-2026, includes measures such as the presentation of a white book on intersectionality and recommendations to harmonise anti-discrimination protection in Portugal regarding intersectionality.

In this context, the Nova School of Law, in partnership with other organisations (in particular, the Commission for Citizenship and Gender Equality), launched *Project Multiversity – A White Paper on Multiple and Intersectional Discrimination*, whose main goal was to develop a scientifically grounded recommendation, based on multidisciplinary knowledge, to level and harmonise anti-discrimination protections in Portugal, with consideration for sequential, additive and intersectional multiple discrimination. The White Paper was issued in February 2024,⁷² highlighting the main findings and recommendations of the project, as well as proposing a preliminary draft of a comprehensive anti-discrimination law. Parliamentary groups were invited to participate in the debate in order to take a public position on this proposal. The study concludes that 'Disaggregation by discrimination factor has been the rule, with the exception of the area of labour and employment. Different laws, with different scopes of protection, are associated with different organisations with different responsibilities. The negative effects of this fragmentation on the possibility of dealing with multiple and intersectional discrimination were recurrently detected in the social analysis we conducted.' Another of the key recommendations of this White Paper, which is also included in the preliminary draft, is the creation of a single body responsible for implementing this law regarding all grounds of discrimination (including gender), called the Equality Agency. This Agency would be an independent body, which would work with the Portuguese Parliament, and whose duties would include supporting victims of discrimination and promoting their access to justice;

⁶⁹ Available at: https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=126693&ACT_TP=PRC.

⁷⁰ Available at: https://edge.sitecorecloud.io/centrodeg65c9-cegere0de-prod6279-8af9/media/Project/Portal-do-Governo/Portal-do-Governo/gc22/Files/Documentos/plano-nacional-2025-portugalcontraoracismo/plano_nacional_de_combate_ao_racismo_e_a_discriminacao_2021_-_2025.pdf.

⁷¹ Available at: <https://data.dre.pt/eli/resolconsmin/92/2023/08/14/p/dre/pt/html>.

⁷² See: https://novalaw.unl.pt/wp-content/uploads/2024/02/24_057-Livro-A4_Livro-Branco-Sobre-Discriminacao_210x297_V5_EBOOK.pdf.

providing victims of discrimination with the information they need to defend their rights; receiving complaints and opening administrative offence proceedings; and setting and applying fines and ancillary sanctions in the context of administrative offence proceedings.

In addition, Decree-Law No. 41/2023 refers to intersectionality under the scope of the newly created Agency for Integration, Migrations and Asylum I.P. (AIMA), in Article 8(a). For the first time intersectional discrimination is expressly mentioned in an organic law, but it is still a theoretical reference, since no specific provisions detailing what a 'intersectional approach' should look like exist.

In Portugal, intersectional discrimination is not taken into account when deciding on discrimination cases (e.g. when imposing a sanction).

There is no case law in Portugal dealing with multiple and/or intersectional discrimination.

2.3 Assumed and associated discrimination

a) Discrimination by assumption

In Portugal, discrimination based on a perception or assumption of a person's characteristics is not expressly prohibited in national law. Law 93/2017 prohibits any form of discrimination, given the breadth of its definition: discrimination meaning:

'any distinction, exclusion, restriction or preference on the basis of the factors set out in Article 1 which has the purpose or effect of denying or restricting the recognition, enjoyment or exercise, on an equal basis, of rights, freedoms and guarantees or social and cultural economic rights' (Article 3(1)(a)).

However, although discrimination by assumption is not expressly prohibited or defined, it should be considered to be implicitly prohibited.

There is no case law dealing with discrimination by assumption.

b) Discrimination by association

In Portugal, discrimination based on association with persons with particular characteristics is prohibited by national law. Law 93/2017 explicitly prohibits discrimination based on association (Articles 3(1)(d) and 4(1)) on the grounds of racial or ethnic origin, colour, nationality, ancestry and territory of origin.⁷³

In the view of the authors of this report, Portuguese law is in line with the CJEU's judgment of 17 July 2008 in *Coleman v. Attridge Law and Steve Law* (C-303/06), *CHEZ Razpredelenie Bulgaria* (C-83/14) and *Bervidi* (C-38/24). The constitutional clause on non-discrimination and also the duty to interpret national legislation according to the directives should lead to the same results in respect of other grounds for discrimination.

⁷³ In a 2018 case involving the regulation of parental responsibility of a child with severe disability, the Court of Appeal of Lisbon took into consideration the risk of discrimination by association, deciding that both parents had the same duties vis-à-vis the child. The Court ordered joint custody, even though the parents disagreed. The Court considered that in a situation where a minor has serious disabilities and is totally dependent on third parties for any act of daily life, an order for joint custody fulfils the very important goal of involving parents under conditions of strict equality concerning personal and professional sacrifices. Although the decision does not expressly concern discrimination by association in employment, this ground was weighed in the Court's decision to order joint custody of the minor, because the mother alleged, as being the only custodian, that she was severely harmed in respect of her professional life and therefore would face harsher difficulties if she were to continue to be the sole caretaker. See Court of Appeal of Lisbon, judgment of 28 November 2018, No. 2261/17.7T8PDL.L1-7, available at: <http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/10988407e6d97c068025838d005c694e?OpenDocument&Highlight=0,defici%C3%A2ncia,poder,paternal>.

2.4 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Portugal, direct discrimination is prohibited and defined in national law.

Article 3(1)(b) of Law 93/2017 considers direct discrimination to occur when, due to racial and ethnic origin or other grounds (colour, nationality, ancestry and territory of origin), a person or a group is subject to less favourable treatment than another is, has been or would be in a similar situation.

Article 3(a) of Law 46/2006 states that:

‘direct discrimination occurs when a person with disabilities is subject to less favourable treatment than another is, has been or would be in a similar situation.’

Article 4 gives some examples of direct discrimination: the refusal to provide or the impeding of the taking up of goods or services; an impediment to or limitation of access to and normal exercise of an economic activity; an impediment to or limitation of access to buildings and public spaces; or the adoption of measures which may limit access to new technologies.

Article 23(1)(a) of the Labour Code and Article 5(2)(a) of Law 3/2011 define direct discrimination as:

‘when a person, due to one of the factors referred to above, is subject to less favourable treatment than another is, has been or would be in a similar situation.’

The definition included in Article 3(1)(b) of Law 93/2017 refers both to individuals and groups.

The other definitions refer only to individuals. To date, there is no case law extending these definitions to groups.

b) Justification for direct discrimination

The law permits direct discrimination to be justified in a very few areas that are covered by genuine occupational requirements.

The Labour Code states in Article 25(2) that:

‘it does not constitute any discrimination when the behaviour based on a discrimination factor constitutes a justifiable and determining occupational requirement for the exercise of the profession, given the nature of the activity in question or the context of its implementation, where it is objectively justified by a legitimate aim and the means of achieving that aim are proportionate.’

The same reasoning is accepted by Article 3(b) *in fine* of Law 46/2006, and Article 5(4)(a) and (b) of Law 3/2011.

However, Law 93/2017 does not permit any justification when it relates to direct discrimination.

2.5 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Portugal, indirect discrimination is prohibited and defined in national law. The definition of indirect discrimination in Portuguese law complies with the definitions given in the directives.

Law 93/2017 states in Article 3(1)(c) that:

indirect discrimination occurs 'whenever, due to the factors indicated in article 1, an apparently neutral provision, criterion or practice places a person or a group in a less advantageous situation in comparison with another person or group of persons'.

Law 46/2006, which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, follows the same wording (Article 3(b)), as does Article 23(1)(b) of the Labour Code.

Article 5(2)(b) of Law 3/2011 defines indirect discrimination as:

'when an apparently neutral provision, criterion or practice would put a person with one of the grounds of discrimination in a less advantageous situation compared with other persons.'

No case of indirect discrimination addresses structural discrimination.

b) Justification test for indirect discrimination

According to Article 3(1)(c) of Law 93/2017, indirect discrimination can be justified if the provision, criterion or practice deemed discriminatory is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Article 3(b) of Law 46/2006 follows the same wording.

Under Article 23(1)(b) of the Labour Code, indirect discrimination can be justified if the provision, criterion or practice deemed discriminatory is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. The text of Article 2(2)(b)(i) of the directive is thus reproduced.

Article 5(4)(a)(b) of Law 3/2011 adopts the definition of the justification for indirect discrimination in the Labour Code, but clarifies that the assessment of the legitimate objectives should take into account the nature of the activity or the context of its exercise, and gives examples of some activities in relation to which this type of discrimination can be justified, such as fashion, publicity or show business.

This is the only rule defining legitimate aims. The courts would decide what constitutes appropriate and necessary means, based on general principles of law and on the circumstances, following the precedents of the CJEU and of the European Court of Human Rights. However, no such cases have come to court so far.

2.5.1 Statistical evidence

a) Legal framework

In Portugal, there is legislation regulating the collection of personal data.

The execution of the General Data Protection Regulation 2016/679 (GDPR) was ensured in Portugal by Law 58/2019⁷⁴ (Law on Personal Data Protection). This statute applies to the processing of personal data in national territory, regardless of the public or private nature of the controller or processor, even if the processing of personal data is carried out in compliance with legal obligations or in the pursuit of public interest tasks, without prejudice to the exceptions provided for in Article 2 of the GDPR. It also applies, in certain cases, to the processing of personal data undertaken outside national territory.

Personal sensitive data include, according to Article 9 of GDPR, data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs; trade union membership; genetic data, biometric data processed solely to identify a human being; health-related data; data concerning a person's sex life or sexual orientation.

It must be noted that the Portuguese local supervisory authority – the Portuguese Data Protection Authority (CNPd) – issued the Decision 494/2019⁷⁵ deciding not to apply certain provisions of such law as they were considered in contradiction with GDPR. Regarding the reasons invoked by the CNPD to publish its deliberation,

'the CNPD clarifies that it makes public its deliberation in order to ensure the transparency of its future decision-making procedures and to this extent contribute to legal certainty and security and also clarifies that the non-application, in future particular cases, of the legal provisions listed above, results in the direct application of the GDPR rules which were being manifestly restricted, contradicted or compromised in their useful effect'.

Aside from the Law on Personal Data Protection, Article 17 and ff. of the Labour Code also covers the protection of personal data. In principle, employers cannot require job candidates or employees to provide information regarding their private lives, except when such information is strictly necessary and relevant in order to assess their capability to fulfil the labour contract and such grounds are supplied in writing. Employers cannot require information about an employee's state of health or state of pregnancy, except when particular circumstances inherent in the nature of the profession justify such a requirement and the grounds are supplied in writing to a doctor (Article 16 of the Labour Code). Employers are, in general, allowed to keep records of necessary personal data on their workers as long as they grant control rights to data subjects and, in cases of biometric data, only after notifying the Portuguese National Data Protection Authority (Comissão Nacional de Proteção de Dados – CNPD) (Article 18 of the Labour Code).

Article 9(2)(c) of Law 16/2001, on religious freedom,⁷⁶ prohibits the requirement to indicate one's religion in all contexts, except for statistical purposes as long as data is not individually identifiable.

In Portugal, the use of statistical data is permitted by national law (Article 8 of Law 22/2008 of 13 May 2008 – the national statistics law).⁷⁷

Statistical evidence is permitted by national law in order to establish indirect discrimination, since statistics, if available, can be used as evidence. They are considered as documents and can be subject to analysis by experts named by the parties or appointed by the court. It is up to the court to evaluate the evidence resulting from the statistics. They are

⁷⁴ Law 58/2019, 8 August 2019, available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=3118A0005&nid=3118&tabela=leis&pagina=1&ficha=1&so_miolo=&nversao=. This was accompanied by Law 59/2019, 8 August 2019, on the protection of natural persons regarding processing of personal data connected with criminal offences or the execution of criminal penalties, and on the free movement of such data, which ensures the implementation of the Law Enforcement Directive, available at: <https://dre.pt/home/-/dre/123815983/details/maximized>.

⁷⁵ Available at: <https://www.cnpd.pt/decisooes/historico-de-decisooes/?year=2019&type=&ent=>.

⁷⁶ Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=806&tabela=leis&so_miolo=.

⁷⁷ Available at: <https://diariodarepublica.pt/dr/detalhe/lei/22-2008-249237>.

admissible if they can be produced as documents (Articles 515 and 423-451 of the New Code of Civil Procedure of 2013, adopted by Law No. 41/2013, 26 June 2013).⁷⁸

Despite that, for many years there was no disaggregated data on ethnic communities in Portugal in various areas of society and the economy. This raised serious debate (and criticism from the Human Rights Committee of the United Nations in 2016) and a Working Group for the census of 2021, on the 'Ethnic-Racial' Questions, was created by Dispatch No. 7363/2018. One of the main conclusions of the final report of this Group was that a question having as its reference the concept of 'origin and/or ethnic-racial belonging' could be introduced into the census, with due cautions and safeguards.⁷⁹ Still, Portugal's National Statistics Institute (INE) considered that this was a very sensitive and non-consensual issue and, therefore, did not include it in the 2021 census. However, on 22 December 2023, the INE published the country's inaugural official statistics regarding the ethnic-racial origin of its inhabitants. The Survey on Living Conditions, Origins and Trajectories of the Resident Population in Portugal (ICOT), carried out in 2023, aims to measure and characterise each of the ethnic groups with which the resident population in Portugal identifies.⁸⁰

Despite demands and critiques both from civil society and academia, the 2021 census did not collect any data based on sexual orientation, gender identity or gender expression, or sexual characteristics, which prevents access to updated and evidence-based information considered crucial. Such absence of data further hinders the quality of comparative, cross-national studies, as there are, to date, no large surveys referring to the LGBTIQ+ population in Portugal.

In civil, criminal and labour proceedings, claimants have the right to require through the court that data in the possession of the respondents or third parties that are required to determine a *prima facie* case of discrimination be put at the court's disposal, and if necessary, be subject to an expert evaluation.

b) Practice

In Portugal, statistical evidence in order to establish indirect discrimination is not used in practice. As far as the authors of this report are aware, there have been no cases in Portugal involving direct or indirect discrimination in which statistics have played a major role.

However, in principle, there does not seem to be any reluctance to use statistical evidence in court on the basis of ethical or methodology issues. If provided, the courts will evaluate the evidence resulting from statistics depending on their own evaluation of the credibility of the institutions that have provided them and if it is relevant to the case at hand.

The evolution of practice in other countries influences Portuguese national law. It is quite common for Portugal's highest courts to quote legislation, court precedents and legal theory from other countries, as well as from European and international courts.⁸¹

⁷⁸ Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1959&tabela=leis.

⁷⁹ See: <https://www.acm.gov.pt/documents/10181/167771/Sumário+Trabalho+GT+Censos+2021+Questões+Étnico-raciais.pdf/6ba40214-9a39-4a88-96b4-5c2919da14d9>.

⁸⁰ Available at: https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=625453018&DESTAQUESmodo=2.

⁸¹ See, *inter alia*, Constitutional Court, judgment of 18 July 2007, No. 416/2007, which states that the Constitutional Court is bound by international sources of law, namely the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union. Available at: <https://www.tribunalconstitucional.pt/tc/acordaos/20070416.html>.

2.6 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Portugal, harassment is prohibited and defined in national law.

According to Article 29(1) and (2) of the Labour Code, harassment is defined as any form of unwanted behaviour, especially if it is based on a discriminatory factor, practised in the context of access to employment, self-employment, work or training, with the purpose or effect of upsetting or embarrassing the person, affecting his/her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment.⁸²

Article 29(3) stresses that 'any unwanted verbal, non-verbal, or physical behaviour of a sexual nature, with the purpose or the effect described in the previous number', constitutes sexual harassment.

According to legal doctrine, work harassment consists of extremely serious behaviour and involves practices by the employer that are *manifestly* humiliating, vexatious and offensive to the dignity of the employee. Conduct by the company must intensely and *unequivocally* infringe the values protected by the law. Therefore, in case law, the assessment is not based solely on the victim's subjective perception but is made on the basis of objective criteria of reasonableness.⁸³

Legal doctrine and case law provide concrete examples of unwanted abusive behaviours, which include inappropriate language, jokes, isolation, unsolicited physical contact or excessive physical approaches, inappropriate text messages, etc.⁸⁴ The fact that the concept of harassment is extremely wide makes it hard under the Portuguese legal system to distinguish real harassment practices from stress situations or a stressful environment in the workplace or in the course of employment relations. The lack of a clear line between these two situations may result in increased difficulties in the protection of victims of real harassment practices.⁸⁵

According to the provisions of Article 29(2) of the Labour Code, harassment does not have to have the 'purpose' of affecting the victim; it is sufficient that this result is the 'effect' of the behaviour adopted by the harasser. The issue, however, is controversial. According to some authors, harassment always requires an intentional element.⁸⁶ In view of the case law of the Supreme Court of Justice,⁸⁷ however, the existence of intent is not required.

⁸² Furthermore, under Article 129(1)(c) of the Labour Code, an employer may not exert any pressure on an employee in order to adversely influence him/her or his/her own or his/her co-workers' working conditions.

⁸³ Porto Court of Appeal, judgment of 13 July 2022, No. 3444/20.8T8MAI.P1 - <https://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/f55c5a39abe92770802588a300507225?OpenDocument&Highlight=0,ass%C3%A9dio>.

⁸⁴ João Leal Amado (2023), *O assédio no trabalho*, *Direito do Trabalho – Relação individual*, 2nd ed. Almedina, pp. 370; Court of Appeal of Lisbon, judgment of 18 December 2019, No. 5488/19.3T8LSB.L1-4 (inappropriate comments, invitations), <https://diariodarepublica.pt/dr/detalhe/acordao/5488-2019-190220975>; Court of Appeal of Evora, judgment of 11 July 2024, No. 450/23.4T8BJA.E1 (physical contact), <https://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/23c883ce01ef6a1080258b9a0031952d?OpenDocument>.

⁸⁵ Júlio Gomes (2014), 'Algumas observações sobre o mobbing nas relações de trabalho subordinado' in: Centro de Estudos Judiciários (CEJ), *O Assédio no Trabalho*, pp. 120-121.

⁸⁶ António Monteiro Fernandes (2017), *Direito do Trabalho*, 187th edition, Coimbra, Almedina, pp. 245; against, Rita Garcia Pereira (2009), *Mobbing ou Assédio Moral no Trabalho*, Coimbra Editora, p. 100

⁸⁷ Judgment of 6 December 2023, No. 1110/22.9T8CTB.C1.S1, <https://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/356a9bc9ddfa62f580258a7e00439c3c?OpenDocument>, Judgment of 8 February 2024, No. 1868/21.2T8CTB.C1.S1), <https://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/a3d5ef557dca151580258ac1002f6440?OpenDocument>; Judgment of 5 September 2018, No. 31947/15.9T8LSB.L2.S1, <http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/d2d102c75406e069802582b3003ee9e0?OpenDocument>.

Existence of intent (and its degree) will always be a factor in grading the severity of the harasser's conduct.

In case law, some decisions highlight that harassment by creating hostile environments undermines personal and professional dignity.⁸⁸

In the field of self-employment, discriminatory harassment is explicitly prohibited on any ground (Article 5(5) of Law No. 3/2011 of 15 February 2011). Harassment constitutes discrimination whenever, in any of the situations provided for in Article 3(1), the person benefiting from the provision of self-employed work commits an act or omission, not accepted by the recipient, based on grounds of discrimination, with the aim of disturbing, embarrassing or affecting their dignity, or creating an intimidating, hostile, degrading, humiliating or destabilising environment.

With regard to social protection (including social security and healthcare), social advantages, education and access to goods and services available to the public including housing and culture, Article 3(1)(f) of Law 93/2017 defines harassment as any form of unwanted conduct related to racial or ethnic origin with the purpose or effect of violating the dignity of a person or a group of persons and of creating an intimidating, hostile, degrading, humiliating or offensive environment. This means that Law 93/2017 extends the concept of harassment to include the dignity of groups.

In Portugal, harassment explicitly constitutes a form of discrimination (see Article 3(2) of Law 93/2017 and Article 29(1) of the Labour Code), and the concept of harassment in national law coincides with the notion of harassment that can be found in Article 2(3) of the directive.

Law 46/2006, which directly concerns disability discrimination, does not contain any provisions relating to harassment. However, taking into account the protection from harassment under the Labour Code, which also relates to disability, the law offers sufficient protection.

As regards housing, Law 12/2019⁸⁹ forbids and punishes harassment in lease contracts. Articles 13-A and 13-B state that harassment is forbidden in leases and subletting contracts; harassment being any unlawful behaviour of the owner, their representative or a third person interested in the acquisition or commercialisation of the leased asset that, in order to provoke the vacancy of the asset, perturbs, constrains or affects the dignity of the tenant, subtenant or persons that, in a legitimate manner, reside with them, or subjects them to an intimidatory, hostile, degrading, dangerous, humiliating, unstable or offensive environment, or gravely impedes or prejudices access to or fruition of the leased object.

Article 154-A of the Portuguese Criminal Code defines the crime of stalking, which was introduced by Law No. 83/2015 of August 5, with a comprehensive scope but without directly linking it to discriminatory behaviours: 'Any person who repeatedly persecutes or harasses another person, by any means, directly or indirectly, in a manner that is likely to cause him/her fear or disquiet or jeopardise his/her freedom of determination, shall be punished by imprisonment for up to 3 years or a fine, if a more severe penalty does not fit him/her under another legal provision.'

b) Scope of liability for harassment

Individual employees and employers can be held liable for harassment in the workplace.

⁸⁸ Court of Appeal of Evora, judgment of 7 November 2023, No. 2687/22.4T8FAR.E1, <https://diariodarepublica.pt/dr/detalhe/acordao/2687-2023-878682275>.

⁸⁹ Law 12/2019, 12 February 2019, forbidding and punishing harassment in lease contracts (fifth amendment to the New Urban Lease Regime), available at: <https://data.dre.pt/eli/lei/12/2019/02/12/p/dre/pt/html>.

A victim of work harassment is entitled to indemnification for any damages suffered, including for pain and suffering (Article 29(4) of the Labour Code).

The practice of harassment at work is considered a very serious administrative offence (*contra-ordenação muito grave*), besides any criminal responsibility that may exist as well (Article 29(5) of the Labour Code).

Under the Labour Code, an employer is responsible for their acts and those of their agents and employees with respect to harassment. The sources of employer liability are several.

Companies with seven or more employees are obliged to adopt a code of good practice to prevent and combat work harassment. The violation of this obligation by the employer is considered a serious administrative offence (Article 127(1)(k) and (7) of the Labour Code).

In addition, an employer is obliged to launch a disciplinary procedure whenever it becomes aware of the possibility that harassment is being conducted in the workplace. The violation of this obligation by the employer is considered a serious administrative offence (Article 127(1)(l) and (7) of the Labour Code).

The practice of harassment is expressly included in the list of behaviours adopted by the employer or other employees that may constitute a fair ground for termination of the employment contract by the employee, the latter being entitled to compensation (Article 394(2)(b)(f) and Article 396 of the Labour Code).

Finally, the employer is held responsible for repairing any damage resulting from professional hardship caused by work harassment. For this purpose, Social Security will bear the costs for the damage repair, being entitled to claim reimbursement from the employer, plus interest (Article 283(8) and (9) of the Labour Code). The employer can also be entitled to reimbursement against the employee harasser under certain circumstances.

Trade unions or other trade/professional associations are liable for the actions of their directors, representatives and officers; they are liable for the actions of their members only if the actions occur in a situation in which the members represent these bodies, or they are acting in accordance with instructions given by a union or an association.

In the case of housing, besides any criminal, civil or administrative responsibility that might exist, the tenant may use a special notification process to cease being the victim of harassment. The tenant must notify the owner to adopt actions necessary to cease the production of noise above the legal limit, for instance, or ensure that there continues to be a connection to essential services such as water or electricity. Within 30 days of receiving such a notification, the owner must demonstrate that the necessary measures have been adopted or justify why the necessary behaviours have not been implemented. As a consequence, the tenant might ask for an injunction against the landlord and a pecuniary sanction of EUR 20 per day until fulfilment of the notification or the issuing of an injunction. Of particular relevance to this report, it should be noted that the sanction is increased by 50 % when the tenant is older than 65 or has a disability to a degree that is equal to or higher than 60 %. Indeed, since in such cases there is still strong legal protection for tenants against eviction, there is a fear that harassment practices are repeated and more serious.

With regard to social protection, education, social protection (including healthcare), social advantages, goods and services, Article 16(1) of Law 93/2017 states that discrimination (discriminatory harassment) is a summary offence punishable by a fine, without prejudice to civil liability or the application of other established sanctions.

Fines may vary between 1 and 10 times the monthly value of the index of social support for individuals. If the offence results from the omission of a duty, the application of the

sanction does not exempt the offender from carrying out this duty if it is still possible (Article 16(5) of Law 93/2017). Recidivism is taken into account for the purposes of setting the actual amount of the fine (Article 16(3) of Law 93/2017). According to Article 16(7) of Law 93/2017, ancillary sanctions can be imposed.

Other cases of discriminatory harassment could lead to fines and compensation (for instance if harassment comes from service providers or clients), since they are considered discriminatory behaviours. However, a provider of goods or services cannot, according to the general rules of civil law, be held liable for third-party harassment, that is, for failing to address harassment in the place where goods and services are placed before the public – unless, of course, there is co-authorship between someone employed in the workplace and the third party.

2.7 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Portugal, instructions to discriminate are prohibited in national law, not only in the field of employment but also in the access to and exercise of self-employment, social protection, social advantages, education and access to goods and services. The concept of instruction to discriminate is not defined as such, but several provisions allude to it and try to exemplify its meaning.

In Portugal, instructions to discriminate explicitly constitute a form of discrimination.

Article 23(2) of the Labour Code expressly states that, 'a mere order or instruction with the purpose of disadvantaging any person by reason of a discriminatory factor' will be deemed to constitute discrimination.

Article 5(3) of Law 3/2011 considers that discrimination can involve a mere order or instruction with the purpose of disadvantaging any person by reason of a discriminatory factor.

Article 5(1) of Law 46/2006 also inscribes that: 1 – In addition to the provisions of the Labour Code, the following are considered discriminatory practices against people with disabilities: (a) the adoption of a procedure, measure or criterion, directly by the employer or through instructions given to its employees or to an employment agency, that subordinates to factors of a physical, sensory or mental nature the offer of employment, the termination of a work contract or the refusal to hire; (b) the production or dissemination of job advertisements, or other forms of advertising related to pre-selection or recruitment, which contain, directly or indirectly, any specification or preference based on factors of discrimination on the basis of disability; (c) the adoption by an employer of a practice or measure which, in the context of the employment relationship, discriminates against an employee in his or her employ'.

According to Article 3(3) of Law 93/2017 of 23 August (which establishes the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin within the scope of social protection, including in social security and healthcare, social benefits, education, access to and the supply of goods and services, housing and culture), the scope of the prohibition against instructions to discriminate seems to be broader than direct orders and includes encouragement or persuasion to treat individuals less favourably. See article 4(2)(j) of this Law, which establishes that 'the adoption of an act in which, publicly or with intent to disseminate widely, a statement is made or information is transmitted by virtue of which a person or group of persons is threatened, insulted or demeaned by reason of any of the factors set out in Article 1' is prohibited.

Incitement is included in Article 240(2) of the Criminal Code, which imposes penal sanctions on anyone who, publicly, by any means intended for dissemination, incites to discrimination, hatred or violence against an individual or group of individuals on the grounds of their colour, racial ethnic or national origin, ancestry, religion, language, gender, sexual orientation, gender identity or expression, sex characteristics, and physical or mental disability. Such persons will be punished by imprisonment of between six months and five years. According to Article 68(1)(2) of the Criminal Procedure Code, any person may bring proceedings in the case of crimes of discrimination, as set out in Article 240 of the Criminal Code. This provision covers both associations and natural persons.

Portuguese law does not mention explicitly that there must be a hierarchical relationship between the instructor and the instructed person. However, in the field of employment, it is a common feature. Article 5(1) of Law 46/2006 – which prohibits and punishes discrimination based on disability and on a pre-existing risk to health in the field of employment, social protection, social assistance, education, access to goods and services, housing, health and culture – refers to instructions given by the employer to workers or job centres.

b) Scope of liability for instructions to discriminate

In Portugal, the instructor and the discriminator are liable (Article 15 of Law 93/2017 and Articles 23(2) and 28 of the Labour Code).

There are no specific rules about sharing liability. As a general matter under Portuguese law, joint and several liability is exceptional and is recognised only when a legal provision explicitly provides for this regime or when it is stipulated by the parties (Article 513 of the Civil Code). That is the case for liability under Law 93/2017, which is an example of tort liability. According to Article 497(1) of the Civil Code, in the event of tort liability, when several parties are responsible for the damages caused, their liability will be joint and several.

Article 11 of the Criminal Code; Article 7 of the General Rules on Minor Offences (*Regime Geral das contra-ordenações*), adopted by Decree-Law 433/82 of 27 October 1982; and Article 551 of the Labour Code set out the liability of legal persons for such actions.

2.8 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for persons with disabilities in the area of employment

In Portugal, the duty on employers to provide reasonable accommodation for persons with disabilities is included in the law, and is not defined.

This duty derives from Articles 85 to 88 of the Labour Code.

According to Article 85(1) of the Labour Code, persons with disabilities or chronic disease are guaranteed equal treatment. Under Article 85(3), the violation of this principle constitutes a serious offence.

Article 85(2) provides that the state will stimulate and support the actions of employers in employing workers with disabilities or chronic disease.

Article 86 is headed 'Positive measures in favour of the worker with disabilities and chronic disease'. The first paragraph deals with the question of reasonable accommodation, establishing that the employer has a duty to provide reasonable accommodation. That means that the employer must adopt appropriate measures to enable a person with a

disability or a chronic disease to have access to and participate in work, to progress in his or her career and to undertake training, unless such measures would impose a disproportionate burden on the employer. The burden will not be considered disproportionate if it is sufficiently alleviated by legal measures that exist within the framework of national disability policy, or if it is compensated for by the state in terms to be provided for in special legislation.

According to Articles 87 and 88 of the Labour Code, several rights are guaranteed for workers with disabilities. These include: the right to be exempted from a specific number of working hours (Article 87), if it is medically proven that this would constitute a danger to their health or safety at work; the right not to perform overtime (Article 88); and the right not to work at night, if that would constitute a risk to their health or to the safety of the workplace (Article 87(1)(b)). The risk must be objectively evaluated (for instance, by a physician) and not solely by the employer (Article 87(2)). Law 90/2019 of 4 September 2019 has extended these rights to employees with cancer.

In addition, Law 46/2006 establishes that the employer has an obligation to analyse and carry out 'the appropriate measures, according to the needs of a specific situation, so that the person with disabilities may have access to a job, or may progress in it, or so that he/she may be provided with training, except if these measures imply disproportionate costs for the employer' (Article 5(4)).

Neither Labour Code nor Law 46/2006 specify when the duty applies; nor do they state the criteria for assessing the extent of the duty; and there is no definition of 'reasonable' or 'disproportionate burden'. However, as part of that determination, the criteria to ascertain what configures reasonable accommodation established in the decision of the CJEU in *DW v. Nobel Plásticos Ibérica SA* (C-397/18; ECLI:EU:C:2019:703) must be considered by national courts, as results from the demand of interpretation of national law according to European Union law.

According to Article 86(2) of the Labour Code, the competent national authorities⁹⁰ must advocate the adoption of reasonable accommodation by employers and create incentives for action in this field. In other words, the state has a duty to provide support to employers. In respect of this support, Decree-Law 290/2009 of 12 October 2009⁹¹ established the employment and skills assistance programme for persons with disabilities (PEAQPDI) and approved the scheme providing technical and financial assistance for the development of employment and skills assistance policies for persons with disabilities. The measures include the adaptation of jobs and the elimination of architectural barriers. Specific protection measures may also be established by law or collective bargaining agreement for workers with disabilities or chronic illnesses (Article 86(4) of the Labour Code).

Article 5(5) of Law 46/2006 also establishes that the burden is not considered disproportionate when it is sufficiently compensated by measures promoted by the state for the professional integration of citizens with disabilities.

In summary, the employer has an obligation to grant reasonable accommodation, if it does not require disproportionate expenses. If there is state help available, then the burden is not considered disproportionate. If no state help is available, an analysis of the justification for the employer not to offer reasonable accommodation is in order. The INR should give an opinion on this matter, in accordance with Article 5(6) of Law 46/2006.⁹²

The duty to grant reasonable accommodation is similar for private sector workers and for civil servants in the general public sector. In fact, Article 4(1)(f) of Law No. 35/2014 of 20 June, which approved the General Labour Law in Public Functions, establishes that the

⁹⁰ Usually the Government and the Ministry of Employment.

⁹¹ Available at: <https://diariodarepublica.pt/dr/detalhe/decreto-lei/290-2009-491685>.

⁹² There is, however, no information available on whether and how this has been implemented.

legal regime of the Labour Code for workers with reduced work capacity, disabilities or chronic diseases is applicable to public employment relationships, extending the protection ensured by the Labour Code to such workers. Law 46/2006 applies to all persons, public or private (Article 2(1)).

The Labour Code does not provide a list of appropriate measures to adapt the workplace to the disability, nor does it mention specifically/explicitly the obligation to adjust possible available jobs to those employees' condition. In fact, in the Portuguese legislation, this accommodation is clearly established only for employees who are injured as a result of a working accident or who are victims of a professional disease (Law 98/2009 of 4 September 2009, Articles 155 to 164). According to some legal scholars,⁹³ this is the only situation where there is an obligation to reassign a worker to another position.⁹⁴ In contrast, other authors think that reassigning a worker with disabilities to another post in the company can be regarded as an accommodation measure, in which case it does not constitute a disproportionate burden on the employer.⁹⁵ According to those authors, the lack of a legal list of possible reasonable accommodation measures may indicate that the concept should be interpreted broadly and there is no reason to exclude extending the duty of reasonable accommodation to include the reassignment of a worker or at least a redistribution of tasks if that is a reasonable and proportionate measure. It is pointed out that Portuguese law should be read in accordance with the ECJ decision in *XXXX v. HR Rail SA* on 10 February 2022, proc. C-485/20 (ECLI:EU:C:2022:85), according to which:

'Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the concept of 'reasonable accommodation' for persons with disabilities, within the meaning of that article, requires that a worker, including someone undertaking a traineeship following his or her recruitment, who, owing to his or her disability, has been declared incapable of performing the essential functions of the post that he or she occupies, be assigned to another position for which he or she has the necessary competence, capability and availability, unless that measure imposes a disproportionate burden on the employer'.

Indeed, as the question of reassigning a worker as a reasonable accommodation measure is not expressly resolved by the Portuguese law, this judgment plays a significant role to support the second approach mentioned above and to ensure coherence between the Portuguese system and the Council Directive 2000/78/EC.

A special regulation exists on the issue of reasonable accommodation. For instance, in cases of disability, reconversion (reassignment) is mandatory (either within the judiciary or most broadly within the public administration) if the magistrate so requests – Article 67 of Law 21/85, 30 July 1985.⁹⁶

b) Case law

There are no references to case law on the website of the Authority for Working Conditions (Autoridade para as Condições de Trabalho – ACT). Likewise, there are no references to

⁹³ See, for example, Martinez, P.R. (2015) *Direito do Trabalho*, 7.ª ed., Almedina, Coimbra, p. 929; Ramalho, M.R.P. (2014) *Tratado de Direito do Trabalho, Parte II – Situações Laborais Individuais*, 5.ª edição, Almedina, Coimbra, p. 870.

⁹⁴ In a decision of Lisbon Court of Appeal of 29 May 2007 (and of the Supreme Court of 24 September 2008), the Court reached the same conclusion. In this case, a cook was identified by the occupational physician as HIV-positive and his contract was considered expired by the employer, a position which ended being confirmed by the courts. The courts ruled that being HIV-positive entailed an objective and absolute inability to perform job functions and that the employer was not obliged to reassign the employee.

⁹⁵ Rouxinol, M. (2017) 'Notes on the principle of inclusion of employees suffering from disability', *Lex Social, Revista Jurídica de los Derechos Sociales*, 1, p. 295.

⁹⁶ Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=5&tabela=leis.

this matter on the website of the National Institute for Rehabilitation (INR).⁹⁷

The authors of this report have not found any recent case law discussing the duty of reasonable accommodation in the private and the public sectors. However, in the authors' view, the question should have been raised in a Porto Court of Appeal decision of 13 July 2022.⁹⁸ In the case, the employee was recruited as a physiotherapist in 2000. In 2017, she was diagnosed with disease in her hands – contact dermatitis – that required some measures to accommodate the worker's situation. The employer refused to adapt her functions and in 2020, the employee was dismissed on the grounds of wilful disobedience. The claimant brought a claim to the court on the basis that the dismissal was unlawful and that she had been subjected to discriminatory harassment, which the Court of Appeal considered unfounded. Although the case was focused on the concept of harassment, the issue could have been analysed according to definition of a disability for the purposes of claiming reasonable accommodation for persons with disabilities in the area of employment. The authors believe therefore that the criteria established in *DW v. Nobel Plastiques Ibérica SA* (C-397/18; ECLI:EU:C:2019:703) were not properly applied in this case.

c) Definition of disability and non-discrimination protection

The definition of a disability⁹⁹ for the purposes of claiming reasonable accommodation is no different from the definition for claiming protection from discrimination in labour law. There is no definition of chronic illness.

Portuguese law protects not only persons with disabilities but also those with an aggravated risk to health (although Law 46/2006 does not define disability, it prohibits and punishes discrimination based on disability and on a pre-existing risk to health). Persons with an aggravated risk to health can also claim for reasonable accommodation.

The definition of disability is the same for private sector workers and those in the general public sector. In fact, Article 4(1)(c) of Law No. 35/2014 of 20 June, which approved the General Labour Law in Public Functions, establishes that the Labour Code's legal framework on equality and non-discrimination is applicable to public employment relationships, extending the protection ensured by the Labour Code to such workers. Law 46/2006 applies to all persons, public or private (Article 2(1)).

⁹⁷ However, see Porto Court of Appeal, judgment of 24 February 2014, procedure No. 361/12.9TTMTS.P1, available at: <http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/009f7692447ae11280257c92003f7ab4?OpenDocument>. In this case, the employee worked as an image technician ('manager') in a cinema on a rotating shift schedule. He had been diagnosed with a condition that prohibited him from working from 7 pm and for more than five consecutive days. Due to this medical limitation, the employee asked for a schedule change (a fixed work schedule) but the employer refused his request, offering him a part-time position in the cinema box office. The employee refused the proposal and the employer communicated the expiration of the employment contract due to the supervening, absolute and definitive impossibility of providing the work. The termination of the contract was confirmed by the Court, which decided that the accommodation required by the employee would impose a disproportionate burden on the employer, and concluded that the employer 'had not to adapt its organisational structure and functioning to continue receiving the benefit of a worker who, meanwhile, was not able, for physical/medical reasons to perform the provision of the work in terms that he had been doing until then'.

⁹⁸ See Court of Appeal of Porto, judgment of 13 July 2022, No. 3444/20.8T8MAI.P1 available at: <http://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/f55c5a39abe92770802588a300507225?OpenDocument&Highlight=0,ass%C3%A9dio>.

⁹⁹ As mentioned above, the definition of 'disability' is included in Law 38/2004 of 18 August 2004, which is not an anti-discrimination law. According to Article 2, a person with disabilities is 'someone who, because of loss or irregularity, whether congenital or acquired, of bodily functions or structures, including psychological functions, has specific difficulties that are likely, in combination with environmental factors, to limit or hinder their activity and participation on equal terms with others'.

d) Failure to meet the duty of reasonable accommodation for persons with disabilities

In Portugal, failure to meet the duty of reasonable accommodation in employment for persons with disabilities is not explicitly recognised by law as a form of discrimination, but it is suggested. This conclusion is valid for both the private and public sectors, as the legal regime remains consistent across both spheres.

Law 46/2006 establishes that, in order to ascertain if a practice is discriminatory,

‘the feasibility of the employer carrying out the appropriate measures, according to the needs of a specific situation, so that the person with disabilities may have access to a job or may progress in it, or so that he/she may be provided with training, shall be analysed, except if these measures imply disproportionate costs for the employer’.

Article 9(5) of Law 46/2006 states that any discriminatory act stipulated in Article 5 amounts to a very serious offence. Violation of these provisions is sanctioned with fines, with amounts depending on the business volume of the company and whether the offence was negligent or practised with intent (*dolus*), according to Article 554(4) of the Labour Code.

An individual to whom reasonable accommodation is denied can either complain to ACT, which must investigate the situation, or file a case in the labour courts.

The Labour Code also refers to the same obligations in Articles 85 and 86. Although the failure to provide reasonable accommodation is not explicitly typified as a discriminatory act (this is not even a concept used in those Articles), it should be considered so, through judicial interpretation, in harmony with the solution established in Law 46/2006.

In addition, as the duty to provide reasonable accommodation always implies a judgment of proportionality, it might be that the duty exists independently of the law detailing financial assistance to employers. It is worth noting that further clarification and judicial interpretation is needed on this point. It is certainly the case that reasonable accommodation that does not cost any money at all is an intrinsic right, and a refusal to provide it is discriminatory.

Besides that, the employer does not have any duty to ask for funding from the state, and a failure to ask for funding does not lead to a breach of the reasonable accommodation duty.

The adaptation of jobs and the elimination of architectural barriers are the responsibility of employers and may, in exceptional circumstances, be financed by the Institute of Employment and Professional Training (IEFP) under certain conditions (Article 32 of Decree-Law 290/2009). The IEFP partially finances enterprises to provide reasonable accommodation for employees with disabilities in their premises, in order to overcome functional difficulties and eliminate physical barriers that prevent or hinder access to the workplace. According to ACT, a violation of this provision may lead to a fine. Cases can be brought to either ACT or the labour courts.

The rules governing the shift of the burden of proof concerning the right to reasonable accommodation are the same as for other grounds of discrimination (direct or indirect) – Article 6(1) of Law 46/2006.

e) Duties to provide reasonable accommodation in areas other than employment for persons with disabilities

In Portugal, there is a duty to provide reasonable accommodation for persons with disabilities in the area of education, according to Decree-Law 54/2018 of 6 July, which

repealed Decree-Law 3/2008 of 7 January 2008, and establishes the legal framework for inclusive education. The legal framework applies to school clusters and non-clustered schools, vocational schools and private, cooperative and solidarity pre-primary, basic and secondary education establishments, regardless of the level of studies.

According to Decree-Law 54/2018, each school should recognise the diversity of its students and identify ways of dealing with that, adapting the teaching processes to the characteristics and individual conditions of each student and mobilising the necessary means to ensure access to the curriculum and to learning. Instead of categorising students with 'special educational needs', or creating a special legal framework based on diagnoses of learning difficulties, the legal framework for inclusive education aims to respond to students' different needs. It determines support measures for learning and inclusion, curriculum areas and specific resources to be used to meet all learners' educational needs throughout their schooling and the different education and training provision. – Article 6.

The different support measures for learning and inclusion represent an integrated continuum of action, and are divided into three levels: universal, selective and additional measures (e.g. curriculum adjustments, major and non-major curriculum adaptations, psycho-pedagogical support) – Article 7.

The measures are adopted according to the material and human resources available at the school. When the implementation of the measures implies the use of additional resources, the school director must request, on grounds, such resources from the competent service of the Ministry of Education (Articles 9(4)(5) and 10(7)(8)). Disproportionate cost is not a limit as with regard to employment.

In areas such as housing, there is no specific duty to provide reasonable accommodation besides what already emanates from legislation on accessibility in public and private grounds. However, in 2015, a ground-breaking and so far isolated judicial decision was issued by the Supreme Court of Justice, according to which, against the condominium's decision, tenants of a housing unit located in the third floor of a building were able, given their age and limited mobility conditions, to install, at their own expense, a mechanical chair on the staircase.¹⁰⁰ This was regarded by the Court as an admissible limitation of the rights of the landlord and of the condominium.

Regarding the public sector, the judgment of the Administrative and Fiscal Court of Leiria of 7 November 2024 is noteworthy.¹⁰¹ The court convicted the Portuguese state for failure to comply with the technical rules of accessibility for persons with disabilities, according to the requirements set by Decree-Law 163/2006 of 8 August 2006. The court ordered the state to comply with the applicable rules, and it specified which adjustments should be introduced (for instance, ramps and elevators and the dimensions of hallways, desks and benches) to several courts in the Leiria District.

f) Duties to provide reasonable accommodation in respect of other grounds

In Portugal, there are no rules regarding reasonable accommodation in respect of other grounds in the public sector or in the private sector. However, this does not mean that reasonable accommodation should not be possible, as it has happened with the provision of flexibility in the working week in order to ensure that workers can enjoy their fundamental religious rights.¹⁰² The appellant was a public prosecutor, whose request to

¹⁰⁰ Supreme Court of Justice, judgment of 26 January 2015, procedure No. 778/11.6TVLSB.L1.S1, available at: <http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/7551d0747921682380257df8005d76cc?OpenDocument>.

¹⁰¹ See <https://www.jn.pt/justica/artigo/governo-obrigado-a-criar-acessibilidades-nos-tribunais-de-leiria/17831532>.

¹⁰² Constitutional Court judgment of 15 July 2025, No. 545/2014, available at: <https://www.tribunalconstitucional.pt/tc/acordaos/20140545.html>.

be dispensed from working shifts at times when the Public Prosecutors Office (MP) is required to be ready to respond to urgent cases, when those shifts fall on Saturdays, was refused by both the MP's Supreme Council and the Supreme Administrative Court (STA). She argued that as a member of the Seventh Day Adventist Church she was obliged to reserve Saturdays for religious purposes and refrain from all secular work. According to the Constitutional Court, there is nothing to prevent a flexible working-time regime from covering not only shift work, but also staggered working hours that make it possible to require different groups of staff to start and finish work at different times, continuous working days that allow work to be concentrated during a particular time of day, and all the other situations that are not subject to fixed working hours or where there is no set work schedule. The Constitutional Court concluded that if the Law governing religious freedom is interpreted in conformity with the Constitution, the flexibility concept must be considered to include every situation in which it is possible to make working hours compatible with dispensing workers for religious reasons. Indirectly, the Constitutional Court thus held that the worker had a right not to be required to work on Saturday for religious reasons.

See also the Constitutional Court judgment of 15 July 2014, No. 544/2014, available at:

<https://dre.pt/pesquisa-avancada/-/asearch/57301957/details/maximized?emissor=Tribunal+Constitucional&perPage=100&types=JURISPRUDENCIA&search=Pesquisar>. In this decision, the Constitutional Court's interpretation was that the 'schedule flexibility' enshrined in Law 16/2001 of 22 June 2001 (Law on Religious Freedom) in Article 14(1)(a) should also apply to shift work. Along the same lines, see Lisbon Court of Appeal, judgment of 17 December 2014, procedure No. 449/10.0TTLS.L1-4, available at: <http://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/c397d271e6180b1280257db700300b71?OpenDocument>.

3. PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

There are no cases of discrimination involving the use of artificial intelligence and/or automated systems.

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Portugal, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. Everyone benefits from the protection of the anti-discrimination laws. That means that irregular migrants have the right not to be discriminated against. Furthermore, discrimination based on nationality is specifically prohibited in labour law (Article 24(1) of the Labour Code) and, in general, in Article 1 of Law 93/2017.

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Portugal, the personal scope of anti-discrimination law covers both natural and legal persons for the purpose of protection against discrimination.

According to Article 12(2) of the Constitution, legal persons have the rights and duties compatible with their nature, including personal rights.

Law 93/2017, which establishes the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial or ethnic origin, nationality, ancestry and territory of origin, applies to natural and legal persons (Article 2(1)).

The Portuguese Criminal Code also protects persons or 'groups of persons', therefore including the protection of such groups in the form of legal persons (Article 240).

Other legislation, given its nature, applies only to natural persons such as workers (Labour Code, Article 23) and persons with disability and aggravated health risk (Article 1 of Law 46/2006).

Law 75/2021, which strengthens access to credit and insurance contracts by people who have overcome or mitigated situations of aggravated health risk or disability, aims to protect only natural persons (Article 15 and 15-A of Law 72/2008 (through Articles 5 and 6 of Law 75/2021, which amended Law 72/2008)).

The national provisions comply with the directives.

b) Liability for discrimination

In Portugal, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

Law 93/2017 provides that both natural and legal persons are liable in the case of discrimination by action or omission (Article 15(1)). Similar reasoning applies to the prohibition of discrimination on the grounds of disability contained in Law 46/2006 (Article 2(1)). However, Article 9 of Law 46/2006 establishes different sanctions for natural persons and for legal persons. Article 4(1) of Law 75/2021, which amended Law 46/2006, also maintains the same legal option.

The Labour Code prohibits 'employers' from discriminating. This applies to natural and legal persons for the purpose of liability for discrimination [Articles 554(1) and (2)(4)].

An employer's customers cannot be held liable under the scope of the equality and non-discrimination provisions; the employer can be held liable only if they have a special duty of care in relation to the behaviour of the customers.

However, there are exceptions specified by law. One such exception is set out by Article 11(1) of the Criminal Code, which states that only natural persons are subject to criminal liability. However, even in criminal law, there are some exceptions to the exception, according to Article 11(2) of the same Code. One example is the case of hate crime, which is a crime that involves discrimination on the grounds of colour, racial ethnic or national origin, ancestry, religion, gender, sexual orientation, gender identity and physical or mental disability, as set out in Article 240(2) of the Criminal Code.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Portugal, the personal scope of national anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.

The equality and non-discrimination provisions of the Labour Code apply to all fields of private employment (Articles 23-32 of the Labour Code), as well as to public sector employees (Article 4(1)(c), (d) and (e) of Law 35/2014). Article 11 of the Labour Code extends the protection against discrimination to economically dependent workers (self-employed workers who are economically dependent).

Anti-discrimination provisions on the grounds covered by the directives are also applicable to statutory offices (Articles 17(1) and 49 of Decree-Law 133/2013 of 3 October 2013).¹⁰³

In addition, provisions of the Criminal Code (Article 240) and provisions of Law 9/2017 (Article 2(1)) and Law 46/2006 (Article 1) apply to every person, regardless of the fact that they are employed or in any way linked to the private or public sectors.

The national provisions comply with the directives.

b) Liability for discrimination

In Portugal, the personal scope of anti-discrimination law covers both the private and public sectors, including public bodies, for the purpose of liability for discrimination.

Law 93/2017 is binding on all public or private persons (Article 2(1)), and Article 2(1) of Law 46/2006 states explicitly that it is binding on both public and private sectors.

Article 15 of Law 93/2017 refers further to the liability of the public and private sectors.

Article 9(1) of Law 46/2006 refers to the liability of the private sector, and Article 9(2) of Law 46/2006 also refers to the public sector. Law 75/2021, which strengthens access to credit and insurance contracts by people who have overcome or mitigated situations of aggravated health risk or disability, also potentially applies to both sectors, although no public credit and insurance companies now exist in Portugal.

The public sector is liable for equality and non-discrimination on the same terms as the private sector (Article 4(1)(c) and (e) of Law 35/2014, which approves the General Regime

¹⁰³ Available at:
https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1992&tabela=leis&ficha=1&pagina=1.

for Contract Work for the Public Sector),¹⁰⁴ and the private sector is liable according to Articles 23 to 32 of the Labour Code.

Article 17(1) of the New Regime of the Public Business Sector of the State approved by Decree-Law 133/2013 establishes that the legal regime of individual work contracts is applicable to the workers of public companies, extending to them the protection ensured by the Labour Code.

Finally, regarding criminal liability, Article 11(2) of the Criminal Code establishes that 'legal persons and similar entities, with the exception of the State, legal persons exercising prerogatives of public power, and organisations under public international law' are liable. Therefore, public companies may be liable once they act in the civil and commercial realms.

There is no relevant and recent case law on the issues covered by this subsection.

3.2 Material scope

There are no cases of discrimination involving the use of artificial intelligence and/or automated systems.

3.2.1 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Portugal, national legislation prohibits discrimination in relation to: conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both the private and public sectors, as described in the directives.

Article 24(1) of the Labour Code guarantees all workers the same opportunities and benefits from equal treatment in terms of access to employment and promotion. As such, neither applicants nor workers should be privileged or harmed on the grounds of, notably, ancestry, gender, race, colour, language, country of origin, religion, political or ideological convictions, education, economic situation, social condition, gender identity and sexual orientation, civil status, family situation, genetic patrimony, reduced capacity to work, disability or chronic disease, nationality or membership of a trade union.

According to this provision, discrimination on the grounds of gender identity is explicitly prohibited. Gender expression and sex characteristics are not explicitly mentioned. However, this is a general clause founded on a large and non-exhaustive list of protected grounds, therefore these factors should also implicitly be included into its scope of application.¹⁰⁵

According to Article 24(2) of the Labour Code, which also applies to the public sector, 'the right to equal opportunities and treatment in access to employment, vocational training, promotion and working conditions' encompasses:

¹⁰⁴ Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2171&tabela=leis.

¹⁰⁵ There is a generous interpretation from courts and doctrine of the general constitutional clause of non-discrimination, as well as of other non-discrimination clauses, which means that other discriminatory grounds, even if not explicitly mentioned, should be protected. There is also legislation on this issue. Although the areas to which Law 38/2018 are not defined, the Law states that '1 - All people are free and equal in dignity and rights, and any direct or indirect discrimination based on the exercise of the right to gender identity and gender expression and the right to protection of sexual characteristics is prohibited (Article 2). This legislation is an element to which all other open non-discrimination clauses in specific material fields should be linked in order to adequately understand their reach and protective scope.'

- selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy;
- access to all types and to all levels of vocational guidance, vocational training and retraining, including practical work experience;
- pay and other pecuniary payments, promotions to all hierarchical levels and the criteria used in the selection of employees to be dismissed; and
- membership of, or involvement in, an organisation of workers or employers, or any organisation whose members carry out a particular profession, including the benefits provided by it.

According to Article 24(3) (recently amended by Law 13/2023 of 3 April 2023), legal rules on equality and non-discrimination are now applicable to decision-making based on algorithms or other artificial intelligence systems. Employers must inform job applicants about the use of algorithms and artificial intelligence (Article 106).

Articles 85 to 88 of the Labour Code refer to workers who have a disability or suffer from a chronic disease or cancer. With the aim of applying the principle of equal treatment, Article 85(1) states that such workers will enjoy all the same rights and be subject to all the same duties as other workers as regards access to employment and job promotion, except to the extent that their disability renders them unable to exercise these.

The law does not lay down criteria for determining when a person is unable to exercise such rights and duties. The decision is first to be taken by the employer, but it can be verified by the Authority for Working Conditions and by the labour courts, which can ultimately decide whether or not the person really is incapable. As far as positive action is concerned, Article 85(2) of the Labour Code stipulates that the Portuguese state will create incentives for hiring persons with disabilities or chronic diseases.

Law 46/2006, which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, forbids all discriminatory practices that prevent, or limit access to, the exercise of an economic activity (Article 4(b)). Article 5 of the Law complements the provisions of the Labour Code and states that the following constitute discriminatory practices against persons with disabilities:

- the adoption, either directly by an employer or through instructions given to workers or job centres, of measures or criteria which may make the recruitment of employees and the termination of a work contract conditional upon factors of a physical, sensory or mental nature; and
- the production or publication of job advertisements or any other kind of publicity connected to the pre-selection or recruitment of workers which may directly or indirectly contain any specification based on discriminatory factors on the basis of disability.

Law 3/2011 of 15 February 2011, which establishes the general framework for the protection of the self-employed as regards the prohibition of discrimination in access to and the development of independent work, forbids any discrimination in access to and the exercise of self-employment. The statute defines independent work in accordance with Directive 2010/41/EU, in Article 2(2), as a professional activity developed outside an employment contract or a legally equivalent situation. Article 5(1) of Law 3/2011 establishes that no-one can be subjected to different treatment in access to and during the development of self-employment, due to a discriminatory ground. This protection includes direct and indirect discrimination and discriminatory harassment (Article 5(2), (3), (5) and (6)) and covers the access to self-employment (including advertisements, selection criteria and the affiliation of the worker with professional associations), and the development of independent work (including pay, access to vocational training and the conditions for the termination of the contract) – Article 3(2) and (3), and Article 4.

Law 3/2011 refers to 'any ground of discrimination', so it should be implicitly understood to include gender expression / sex characteristics and gender identity.

3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Portugal, national legislation prohibits discrimination in working conditions, including pay and dismissals, for all five grounds and for both private and public employment.

Protection against discrimination relating to working conditions is covered by Articles 23(1) and 24(1) of the Labour Code. According to this provision, discrimination on the grounds of gender identity is explicitly prohibited. Gender expression and sex characteristics are not explicitly mentioned. However, this is a general clause founded on a large and non-exhaustive list of protected grounds, therefore these factors should also implicitly be included in its scope of application.

The protection covers employment and working conditions, including pay and dismissal, and contractual conditions of employment, as well as the conditions in which work is, or is expected to be, carried out.

Articles 85 to 88 of the Labour Code refer to workers who have a disability or suffer from a chronic disease or cancer. With the aim of applying the principle of equal treatment, Article 85(1) states that these workers will enjoy all the same rights and be subject to all the same duties as other workers as regards working conditions, except to the extent that their disability renders them unable to exercise these. The law does not lay down criteria for determining when a person is unable to exercise such rights and duties. The decision is first to be taken by the employer, but it can be verified by ACT and by the labour courts, which can ultimately decide whether or not the person really is incapable. As far as positive action is concerned, Article 85(2) of the Labour Code states that the Portuguese state will create incentives for hiring persons with disabilities or chronic diseases.

3.2.3 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Portugal, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

National law on discrimination includes access to vocational guidance and vocational training, advanced vocational training and retraining as defined and formulated in the directives.

Article 24(1) of the Labour Code guarantees that all workers are to have the same opportunities and benefit from equal treatment in terms of training. Article 24(2)(b) of the Labour Code refers to the same rights in respect of 'guidance, training and vocational retraining at any level, including the acquisition of practical experience'. It prohibits discrimination in vocational guidance and vocational training, advanced vocational training and retraining working conditions for all five grounds and for both private and public employment. According to that provision, discrimination on the grounds of gender identity is explicitly prohibited. Gender expression and sex characteristics are not explicitly mentioned. However, this is a general clause founded on a large and non-exhaustive list of protected grounds, therefore these factors should also implicitly be included in its scope of application.

Article 85 of the Labour Code grants equal treatment to workers with disabilities in vocational training, but no specific measures are provided for. Article 86 refers to positive measures on vocational training to benefit workers with disabilities.

Article 127(1)(d) of the Labour Code establishes that employers must provide vocational training to workers according to their qualifications, and Article 130(d) of the Code states that one of the objectives of vocational training must be to promote the vocational rehabilitation of persons with disabilities, especially those whose disability results from a work-related injury.

Furthermore, the state must support self-employment, teleworking, part-time work and working from home.

Article 6(2) of the Labour Code states:

‘The state should guarantee, in particular, the access of citizens to vocational training and continual updating of knowledge and skills from when they start work and should also support the operation of the training system through public funds.’

These rules also apply to the public sector.

3.2.4 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Portugal, national legislation prohibits discrimination in relation to: membership of and involvement in workers’ or employers’ organisations or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations, for all five grounds and both for private and public employment. This is established in Article 24(2)(d) of the Labour Code that links this prohibition to the grounds covered in Article 24(1). According to this provision, discrimination on the grounds of gender identity is explicitly prohibited. Gender expression and sex characteristics are not explicitly mentioned. However, this is a general clause founded on a large and non-exhaustive list of protected grounds, therefore these factors should also implicitly be included in its scope of application.

Additionally, trade unions are not allowed to discriminate against their own members or with regard to applications for membership (Articles 441 and 444(3) of the Labour Code). No specific grounds for discrimination are mentioned in these provisions, therefore gender identity/expression or sex characteristics should be included in this general clause.

3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Portugal, national legislation prohibits discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive.

The Constitution grants protection against all grounds of discrimination in general, not only in Article 13 but also in Article 26(1). Article 13 covers the following grounds: ancestry, gender, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances and sexual orientation. Age, disability, gender identity/expression and sex characteristics are not mentioned. However, this is a general clause founded on a large and non-exhaustive list of protected grounds, therefore these factors should also implicitly be included in its scope of application.

Furthermore, the Constitution covers social security explicitly in Article 63(1) and (2), and healthcare in Article 64.

According to Article 63 on social security and solidarity, everyone has the right to social security, and the state is charged with organising, coordinating and subsidising a unified and decentralised social security system with the participation of the trade unions, other organisations that represent workers and associations that represent the other beneficiaries.

Article 64 on health states: 'everyone has the right to the protection of health and the duty to defend and promote health'. According to Article 64(2), the right to the protection of health will be fulfilled 'by means of a universal and general national health service which, with particular regard to the economic and social conditions of the citizens who use it, shall tend to be free of charge'.

Law 93/2017 prohibits discrimination on the grounds of racial or ethnic origin, colour, nationality, ancestry and territory of origin within the scope of social protection, including in social security and healthcare (Articles 1 and 2(1)(a)).

In particular, Law 38/2018 of 7 August 2018, which regulates the right to self-determination of gender identity and gender expression and protection of one's sexual characteristics¹⁰⁶ states that '1. The State shall guarantee, to those who request it, the existence of and access to reference services or specialised units within the National Health Service, namely for treatments and surgical, pharmacological or other interventions aimed at matching the body with its gender identity' (Article 11).

The social security system must protect individuals in illness and old age and if they are widowed or orphaned or with disabilities, as well as if they are unemployed or in any other situation that entails a lack of or reduction in means of subsistence or the ability to work.

The Labour Code and the law in general do not contain any exceptions to the provisions regarding social protection. The principle is that discrimination is not allowed in these areas (Articles 13(2), 26(1) and 59(1) of the Constitution).

Law 4/2007 of 16 January 2007¹⁰⁷ (the Basic Law on the Social Security System) establishes in Article 7 the principle of equal treatment that prohibits any kind of discrimination, although it only gives examples involving sex and nationality. Concerning nationality, it is admissible to impose conditions of residence and reciprocity. Age, disability, religion or belief, gender identity/expression and sex characteristics are not mentioned. However, this is a general clause founded on a large and non-exhaustive list of protected grounds, therefore these factors should also implicitly be included in its scope of application.

Article 30 of Law 38/2004,¹⁰⁸ which defines the general framework of the legal regime with regard to the prevention of disability and the training, rehabilitation and participation of persons with disabilities, provides that the state will adopt the necessary and specific measures to ensure the social protection of persons with disabilities, through cash or benefits in kind, with the aim of achieving personal autonomy and adequate professional and social integration.

Portuguese national law goes beyond the directives, because there is a constitutional principle of equivalence of rights (Article 15 of the Constitution) between nationals and non-nationals.

¹⁰⁶ Available at: <https://dre.pt/dre/detalhe/lei/38-2018-115933863>.

¹⁰⁷ Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2243&tabela=leis.

¹⁰⁸ Available at: <https://dre.pt/application/file/480649>.

In respect of social housing, the principle of non-discrimination derives explicitly from Article 2(1) of the Basic Law on Housing,¹⁰⁹ which applies to all forms of housing provision. According to this provision, discrimination on the grounds of gender is explicitly prohibited. Gender identity/expression and sex characteristics are not explicitly mentioned, but they should be implicitly included in its scope of application.

Specifically, Law 81/2014 of 19 December 2014¹¹⁰ (Law on Social Housing) does not provide a non-discrimination clause but points to administrative selection procedures in which the selection criteria should be non-discriminatory (see Article 6 of the Code of Administrative Procedure). However, Article 11 of Law 81/2014 defines as preferential criteria for social housing the following: single-parent families, minors, persons with disabilities, those aged 65 or over and victims of domestic violence.

a) Article 3(3) exception (Directive 2000/78)

National law does not rely on the exception in Article 3(3) of the Employment Equality Directive in relation to religion or belief, age, disability and sexual orientation.

3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)

In Portugal, national legislation prohibits discrimination in social advantages as formulated in the Racial Equality Directive.

Discrimination is not permitted in relation to social advantages (see, first and foremost, Article 13 of the Constitution concerning the principle of equality, which also applies to social advantages, although judicial interpretation is required) in respect of the following grounds: ancestry, gender, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances and sexual orientation. Age, disability, gender identity/expression and sex characteristics are not mentioned. However, this is a general clause founded on a large and non-exhaustive list of protected grounds, therefore these factors should also implicitly be included in its scope of application.

The Basic Law on the Social Security System (Law 4/2007) sets out a system of citizen protection (Article 26 and subsequent articles), which includes social advantages.

Law 4/2007 establishes in Article 7 the principle of equal treatment in access to social security and social advantages in general, and forbids any kind of discrimination, including on the grounds of sex and the nationality of beneficiaries. Due to the general principle of non-discrimination included in Article 13(2) of the Constitution, the grounds of age, disability, religion or belief, sexual orientation, gender identity/expression and sex characteristics despite not being mentioned explicitly in Article 7 of Law 4/2007, are also implicitly covered. Article 7 is a general clause founded on a large and non-exhaustive list of protected grounds, therefore these factors should also implicitly be included in its scope of application.

Decree-Law 4/2015, which establishes the Code of Administrative Procedure,¹¹¹ includes in Article 6 the principle of equality forbidding any discrimination by reasons of ancestry, sex, race, territory of origin, religion, political or ideological convictions, education, economic situation, social condition or sexual orientation. Therefore, any social advantages of an administrative nature should also be non-discriminatory. Age, disability, gender

¹⁰⁹ Law 83/2019, 3 September 2019, available at: <https://dre.pt/home/-/dre/124392055/details/maximized>.

¹¹⁰ Law 81/2014, 19 December 2014 (last amended by Law 32/2016, 24 August 2016), available at: <https://dre.pt/web/guest/pesquisa/-/search/75194221/details/maximized>.

¹¹¹ Decree-Law 4/2015, 7 January 2015, available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?ficha=101&artigo_id=&nid=2248&pagina=2&tabela=leis&nversao=&so_miolo.

identity/expression and sex characteristics are not mentioned, but should be implicitly protected.

Law 93/2017 which establishes the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin, expressly includes the field of social advantages (Article 2(1)(b)).

In Portugal, the lack of a definition of social advantages does not raise particular problems.

3.2.7 Education (Article 3(1)(g) Directive 2000/43)

In Portugal, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.

The general principles of equality and non-discrimination enshrined in Article 13 of the Constitution are applicable to education. Consequently, no-one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, gender, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.

Age, disability, gender identity/expression and sex characteristics are not mentioned. However, Article 13 is a general clause founded on a large and non-exhaustive list of protected grounds, therefore these factors should also implicitly be included in its scope of application.

As for disability, Article 71(1) of the Constitution establishes that people with disability fully enjoy the rights and perform the duties, in accordance with their incapacity, and there are no doubts that this ground benefits from the provision of Article 13.

In addition, the Constitution refers to the right to education in Chapter III on cultural rights and duties.

Article 74(1) of the Constitution states that everyone has the right to education, and that the right to equal opportunities and to access to and success in schooling will be guaranteed. Article 74(2) provides that:

‘in implementing the education policy, the state shall be charged with:

- a. ensuring universal, compulsory and free basic education;
- b. creating a public, and developing the general, pre-school system;
- c. guaranteeing permanent education and eliminating illiteracy;
- d. in accordance with his capabilities, guaranteeing every citizen access to the highest levels of education, scientific research and artistic creation;
- e. progressively making all levels of education free of charge;
- f. inserting schools into the communities they serve and establishing links between education and economic, social and cultural activities.’

Furthermore, Article 2 of Law 46/86 of 14 October 1986 (Basic Law on the Education System),¹¹² grants all individuals the right to education and culture in accordance with the Constitution, which means that all five grounds and also gender identity/expression and sex characteristics are covered, though never explicitly mentioned in the Law.

Anti-discrimination law is applicable to vocational training in technical schools and universities, and also covers lifelong learning courses. Besides establishing a basic

¹¹² Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1744&tabela=leis&so_miolo.

educational policy, Law 46/86 declares that education is universal, compulsory and free of charge for all children.

Concerning religion, Article 24 of Law 16/2001 (Law on Religious Freedom) provides the possibility and the conditions for religious teaching in public educational institutions. Although discrimination against students is not explicitly prohibited in this provision (only generally in Article 2), it should be considered to be implicitly included.

Regarding sexual orientation, Article 2(f) and 2(l) of Law 60/2009 of 6 August 2009 (Regime for the implementation of sex education in schools),¹¹³ which establishes a framework for sex education in schools, aim to promote education against discrimination on the grounds of sexual orientation, but this is limited to the obligation for schools to promote respect for diversity and eliminate discriminatory behaviours. It applies to all public establishments at basic and secondary level, but not to universities. It also applies to the private and cooperative establishments that have an association contract with the state and therefore receive financing and benefits from it.

Article 7 of Law 51/2012 of 5 September 2012¹¹⁴ (Statute governing students and school ethics) establishes that no student may be discriminated against by the school community for reasons related to their sexual orientation and gender identity (and more generally, according to Article 7(1)(a) for reasons related to ethnic origin, health, sex, sexual orientation, age, gender identity, economic, cultural or social condition or political, ideological, philosophical or religious convictions). Gender expression and sex characteristics are not mentioned, judicial interpretation is required. It applies to all public establishments at basic and secondary level.

As already mentioned, Law 38/2018 of 7 August 2018, which regulates the right to self-determination of gender identity and gender expression and protection of one's sexual characteristics, defined that schools, both public and private, should 'promote' the exercise of such rights (Article 12).¹¹⁵ This raised several discussions in Portugal on the potentially ideological programming of education and, *in fine*, the Constitutional Court ended up considering that that norm was unconstitutional.¹¹⁶ As a consequence, Ordinance 7247/2019 – which established administrative measures to implement the aforementioned Article 12 – was cancelled.¹¹⁷ On 15 December 2023, the Portuguese Parliament approved specific measures that schools must adopt to ensure the implementation of Law 38/2018 of 7 August 2018. Among those measures were the use of a self-attributed name and gender on administrative documents and enforcing their use in the wider school context; the use of preferred clothing, and access to toilets and changing rooms based on self-assigned gender identity, thus preserving the intimacy, safety and uniqueness of children and young people. However, in January 2024, the President of the Republic vetoed this parliamentary legislation.¹¹⁸ This has had the consequence of depriving students from enjoying the rights recognised by Law 38/2018 in the school context.

More recently, a legal reformulation of 'Education for Citizenship' in schools (Resolution of the Council of Ministers No. 127/2025 of 29 August)¹¹⁹ has eliminated issues related to sexuality. This has been criticised.¹²⁰

¹¹³ Available at: <https://dre.pt/pesquisa/-/search/494016/details/maximized>.

¹¹⁴ Available at: <https://dre.pt/pesquisa/-/search/174840/details/maximized>.

¹¹⁵ Available at: <https://dre.pt/dre/detalhe/lei/38-2018-115933863>.

¹¹⁶ Decision No. 474/2021, available at: <https://files.dre.pt/1s/2021/07/14200/0002000050.pdf>.

¹¹⁷ Available at: <https://dre.pt/dre/detalhe/despacho/7247-2019-123962165>.

¹¹⁸ See <https://www.dn.pt/politica/marcelo-vetou-mas-a-lei-continua-a-obrigar-as-escolas-a-proteger-alunos-trans-e-lgbt>.

¹¹⁹ See also the curriculum, available at https://www.dge.mec.pt/sites/default/files/Curriculo/Aprendizagens_Essenciais/cidadania-desenvolvimento.pdf.

¹²⁰ See <https://www.publico.pt/2025/07/21/sociedade/noticia/governo-eliminou-sexualidade-aprendizagens-essenciais-disciplina-cidadania-2141097>.

With regard to racial or ethnic origin, Law 93/2017 also covers the field of education (Article 2(1)(c)). According to Article 4(2)(f) and (g) of the statute, 'the denial or limitation of access to educational institutions, public or private', and 'the establishment of classes or the adoption of other internal organisational measures in institutions of public or private education, according to discriminatory criteria' are considered as discriminatory practices.

Concerning pupils with disabilities, Articles 16, 17 and 18 of the Basic Law on the Education System refer to the right of persons with disabilities to special education, and Article 20 relates to the education of adults. Special conditions for access to education and special learning methods are stipulated for students with disabilities. Provisions cover both 'education' and 'vocational training'.

Article 5(1) of Decree-Law 54/2018 of 6 July, which establishes the legal framework for inclusive education, states that each school should recognise the diversity of its students and identify ways of dealing with that, adapting the teaching processes to the characteristics and individual conditions of each student and promoting equality and non-discrimination in access to the curriculum and to learning. Instead of categorising students with 'special educational needs', or creating a special legal framework based on diagnoses of learning difficulties, the legal framework for inclusive education aims to respond to students' different needs. It focuses on educational responses and mobilising health, employment, vocational training and social security resources, in complementary fashion and whenever considered necessary.

Finally, Article 4(h) and 4(i) of Law 46/2006 states that the denial or limitation of access to public or private educational institutions or to any means of compensation / appropriate support for the specific needs of students with disabilities constitutes a discriminatory practice; in addition, the establishment, according to discriminatory criteria, of classes or the adoption of other internal organisational measures in public or private educational institutions are deemed as discriminatory practices, unless they are justified under the objectives referred to in Article 2.

In Portugal, the general approach to education for pupils with disabilities gives rise to practical difficulties due to the lack of specialised teachers and the unavailability of accessible classrooms. However, as the Ministry of Education has not made available a database on pupils with disabilities, the extent of such difficulties cannot be fully confirmed.

To the knowledge of the authors of this report, there is no case law on this topic.

a) Trends and patterns regarding Roma pupils

In Portugal, there are some societal patterns in education regarding Roma pupils. As regards education, differences remain between Roma and the general population; nonetheless, evolution has occurred in some respects.

Before the start of the implementation of the National Roma Communities Integration Strategy 2013-2020, it was reported that Roma students generally left school earlier than other pupils (between the ages of 10 and 12), and did not complete the period of compulsory education. Many Roma children left school because of academic failure and having to repeat school years. The majority of Roma children who dropped out were girls. Roma girls were particularly likely to leave school at a very early age because of cultural reasons and traditions.¹²¹ Some of the reasons for the high drop-out rate among Roma

¹²¹ See Guedes, M., Magano, O. and Candeias, P. (2014), *Estudo Nacional sobre as Comunidades Ciganas (National Study on the Roma Communities)*, HCM, pp. 92 ff, 205 ff, available at: <https://repositorio.iscte-iul.pt/bitstreams/8e0730ac-5b45-4fc7-9353-f30076e28699/download>. According to this study, in which 1 599 people were surveyed, 1/3 of Roma respondents had never attended school or did not go beyond the 1st cycle of basic education, and only 2.8 % had a secondary and/or higher education diploma. In contrast, 19.2 % of the Portuguese population had secondary education and 16.5 % had higher education (Pordata, 2014).

students were: (a) absenteeism; (b) lack of parental interest; (c) failure of schools to adequately cope with Roma culture and the social needs and values of Roma children; and (d) difficulties experienced by teachers in understanding the children's situation.¹²²

This led to the implementation of the National Roma Communities Integration Strategy 2013-2020 (ENICC) through Resolution of the Council of Ministers 25/2013 of 27 March 2013, which was aligned with the European Commission Communication 'A European framework for national Roma integration strategies up to 2020' from 2011. This Strategy was revised by Resolution 154/2018 of 8 November 2018,¹²³ and was extended until the end of 2022.

The National Strategy was subject to an external evaluation. This process was initially expected to be completed during 2023. However, since the external evaluation had still not been concluded, the Portuguese Government decided to extend the Strategy until 31 December 2023 (Resolution 36/2023 of 20 April 2023).

The results of the external evaluation were known at the end of 2023 and showed that nearly 90 % of Roma people did not know or barely knew that the strategy was aimed for them and that the implementation rate was only 68 %. The main improvements could be found in education, but more involvement of parents, more diversity education and more scholarships were needed.¹²⁴

No extension for 2024 and 2025 was made and no new ENICC has been approved as at the cut-off date for this report. The Government decided to constitute an internal team within AIMA (which includes a Directorate of Services for the Promotion of Integration and Inclusion of Roma Communities (ROMA) [U2]) with the constitution of focus groups.¹²⁵

In March 2025, a formal challenge was addressed to the Prime Minister through an open letter signed by 23 associations and more than 160 people concerning the delay in approving the National Strategy for the Integration of Roma Communities (ENICC) 2022-2030. The document warns that Portugal is the only European Union Member State that has yet to adopt the new strategy, representing a cumulative delay of approximately three years in its implementation.¹²⁶

The Council of Europe Advisory Committee for the Framework Convention for the Protection of National Minorities has issued its fifth Opinion on Portugal, adopted on 15 October 2025, which recognised improvements in the education of Roma people but still highlighted the need for a new national strategy for Roma integration, the urgency of ending the inactivity of CEARD and the need for a Roma integration body that would function outside AIMA, since most Roma people are Portuguese and not migrants.¹²⁷

In November 2025, the PESSOAS 2030 Programme launched a call for applications, open until June 2027, for Support for Local Roma Inclusion Plans.¹²⁸ Municipalities in the North,

¹²² There is a variety of literature in Portuguese on this topic. For a more recent article that summarises such reasons, see Mendes, M.M., Magano, O., Costa, A.R., 'Ciganos portugueses: escola e mudança social', *Sociologia, Problemas e Práticas*, 93/2020, available at: <http://journals.openedition.org/spp/7754>.

¹²³ Available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/resolucao-conselho-ministros/2018-212591397>.

¹²⁴ See <https://www.publico.pt/2024/01/11/sociedade/noticia/pessoas-ciganas-desconhecem-estrategia-pensada-integrar-2076379>. The report is no longer available online.

¹²⁵ See <https://www.publico.pt/2024/11/14/sociedade/noticia/governo-fez-marcha-atras-proposta-estrategia-integracao-comunidades-ciganas-2111841>.

¹²⁶ See <https://www.publico.pt/2025/03/25/sociedade/noticia/comunidade-cigana-respostas-nova-estrategia-integracao-2127286>.

¹²⁷ See https://cdn-images.rtp.pt/icm/noticias/docs/6d/6db891969dd4f61bd7edf982b78a427a_7eb0d1a76044f67633f13e8f2094277d.pdf.

¹²⁸ See <https://portugal2030.pt/wp-content/uploads/sites/3/2025/12/AVISO-PESSOAS-2025-26-PLICC-Implem.pdf>.

Centre and Alentejo regions are eligible to apply. Through a call for proposals, PESSOAS-2025-26 will fund the implementation of local Roma integration plans through a participatory, networking and community-based approach. These initiatives may span the domains of equality, inclusion, participation, education, employment, health and housing.

The ROMA Educa Programme, created by the former High Commission for Migrations and now managed by AIMA, aims to prevent school dropouts and support the attendance and completion of the third cycle of basic education (7th, 8th, and 9th years of schooling) and secondary education (10th, 11th and 12th years of schooling) by students from Roma communities, through the awarding of scholarships, with students from Roma communities attending and remaining in secondary education. The number of scholarships awarded increased from 100 in 2019/2020 to 210 in 2023/2024. The 2025 programme made 210 grants available.¹²⁹

In terms of higher education, it is worth mentioning the Operational Programme for the Promotion of Education (OPRE), a scholarship and training programme now managed by AIMA devoted to young university students from Roma communities. Access to this programme is open to students from Roma communities and residing in Portugal, who are enrolled in a recognised higher education institution, as students in the bachelor's degree cycle, master's degree, higher technical professional courses, part-time degree, post-graduate cycle or enrolled in a minimum of three isolated subjects/disciplines. For the 2023/2024 academic cycle, 23 scholarships were granted to 12 male and 11 female students. The recipients are pursuing degrees across diverse fields, such as tourism, basic education, psychology, geology, mechanical engineering and social work. Applications for the 10th Edition of the Operational Programme for the Promotion of Education (OPRE) were open until 5 December 2025.¹³⁰

As a result of the strategy and the measures currently being implemented, the situation of Roma education has improved. The ECRI 2025 Country Report on Portugal¹³¹ notes, positively, that the authorities have implemented several measures aimed at improving school attendance and the academic performance of Roma students. However, despite some progress, ECRI regrets that Roma people continue to have a low level of education and a high level of absenteeism and school drop-out when compared to the general population. According to recent statistics, around 90 % of Roma people have only completed basic education. Their enrolment rate is 18.6 % in the third cycle of basic education and a mere 2.6 % in secondary education. ECRI welcomed the creation, in many Portuguese municipalities, of the position of socio-cultural mediators, some of whom are Roma. These mediators act as a liaison between families and schools. ECRI also advises the authorities on the publication of various educational resources, guides and studies by the Directorate-General for Education, all of which aim to support schools in the inclusion of Roma students. Regrettably, many of the good practices taken to improve Roma education are project-based and have limited funding or reduced national coverage. ECRI recommends that the authorities ensure that Roma pupils complete compulsory education and have the opportunity to pursue higher and other level of education, including by: (i) strengthening the role of Roma mediators in this field and pursuing stronger relations between schools, Roma children, their families and Roma communities; (ii) further expanding the availability of scholarships to encourage school attendance and facilitate access to higher education; and (iii) implementing integrated actions, across ministries and together with local authorities, aimed at mitigating the impact that socio-economic factors have on a student's attendance and performance at school.

¹²⁹ See <https://aima.gov.pt/pt/noticias/programa-de-bolsas-roma-educa-candidaturas-abertas-ate-27-de-janeiro>.

¹³⁰ See <https://aima.gov.pt/pt/noticias/10-a-edicao-do-opre>.

¹³¹ See <https://rm.coe.int/sixth-report-on-portugal/1680b6668d>.

3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Portugal, national legislation prohibits discrimination in access to and the supply of goods and services as formulated in the Racial Equality Directive.

Law 93/2017 is applicable to access to and supply of goods and services, including housing (Article 2(1)(d)). The provision prohibits discrimination on the grounds of racial or ethnic origin, colour, nationality, ancestry and territory of origin.

The rules against discrimination based on disability are also applicable to access to buildings and public spaces and the supply of goods and services, and are contained in Decree-Law 163/2006 of 8 August 2006, which sets out access regulations for buildings and public spaces, and in Law 46/2006, which prohibits and punishes discrimination based on disability and on a pre-existing risk to health (Article 4).

In particular, this Article establishes an open-ended list of types of services in which discrimination is prohibited. These are:

‘b) The impediment or limitation to the access and normal exercise of an economic activity; c) Refusal or conditioning of the sale, renting or subletting of real estate, as well as access to bank credit for the purchase of housing, and refusal or penalisation in the signing of insurance contracts; d) The refusal or impediment to the use and dissemination of sign language; e) Refusal or limitation of access to the built environment or to public places or places open to the public; f) Refusal or limitation of access to public transport, whether by air, land or sea; g) Refusal or limitation of access to healthcare provided in public or private healthcare facilities; h) Refusal or limitation of access to educational institutions, public or private, as well as to any means of compensation/support appropriate to the specific needs of pupils with disabilities; i) The constitution of classes or the adoption of other measures of internal organisation in public or private educational establishments according to criteria of discrimination on the grounds of disability, unless such criteria are justified by the objectives referred to in Article 2, number 2; j) The adoption of a practice or measure by any company, entity, body, service, official or agent of the direct or indirect administration of the State, the Autonomous Regions or the local authorities, which conditions or limits the exercise of any right; l) The adoption of an act in which, publicly or with the intention of wide dissemination, a natural or legal person, public or private, makes a statement or transmits information whereby a group of people are threatened, insulted or demeaned on the grounds of discrimination on the basis of disability; m) The adoption of measures limiting access to new technologies’.

The other grounds of discrimination – religion or belief, age, sexual orientation, gender identity/expression and sex characteristics – are not expressly mentioned in national law, but they should implicitly be covered.

Decree-Law 4/2015, which establishes the Code of Administrative Procedure,¹³² includes in Article 6 the principle of equality, forbidding any discrimination by reasons of ancestry, sex, race, territory of origin, religion, religious or ideological convictions, education, economic situation, social condition or sexual orientation. The Code applies only to public services.

Decree-Law 72/2008, which establishes the legal framework for insurance contracts, prohibits discriminatory practices in concluding, executing and terminating insurance contracts that go against Article 13 of the Portuguese Constitution, which is the general

¹³² Decree-Law 4/2015, 7 January 2015, available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?ficha=101&artigo_id=&nid=2248&pagina=2&tabela=leis&nversao=&so_miolo.

anti-discrimination provision in the Portuguese Fundamental Law. It also prohibits discriminatory practices in respect of disability and aggravated health risk that may entail less favourable treatment for a person in comparison with another who is in a similar situation (Article 15(1) and (2)).¹³³ However, practices and techniques of evaluation, selection and acceptance of risks as a result of objective reasoning based on rigorous and relevant data, according to the principles of insurance, were acceptable (Article 15(3)). Therefore, Portuguese legislation required specific actuarial data, with a requirement of reasonableness, in order to ensure that a difference in treatment based on disability or age would not amount to discrimination.

Law 75/2021 of 18 November 2021, which strengthens access to credit and insurance contracts for people who have overcome or mitigated situations of aggravated health risk or disability, prohibiting discriminatory practices and enshrining the right to be forgotten, amending Law 46/2006 of 28 August 2006 and the legal framework of the insurance contract (Decree-Law 72/2008),¹³⁴ has explicitly determined that 'Discriminatory practices, on the grounds of disability or aggravated health risk, are considered to be wilful or negligent actions or omissions that violate the principle of equality, implying less favourable treatment for persons in that situation than that given to another person in a comparable situation, under the terms of Law 46/2006, of August 28' [Article 15(2) of Decree-Law 72/2008].

In this case, besides the demand practices and techniques of evaluation, selection and acceptance of risks specific to the insurer for the purpose of conclusion, execution and termination of the insurance contract must be objectively justified, based on rigorous statistical and actuarial data considered relevant under the terms of the principles of insurance, they cannot go against the limits set out in a national agreement on access to credit and insurance, and they are subject to supervision by the Portuguese Supervision Authority [Article 15(3)]. Furthermore, in the event of refusal to take out an insurance contract or an increase of the respective premium on the grounds of disability or aggravated health risk, the insurer shall, on the basis of the data obtained in accordance with the preceding paragraph, provide the applicant, without any request to that effect, with information on the ratio between the specific risk factors and the risk factors of a person in a comparable situation but not affected by that disability or aggravated health risk [Article 15(4)].

In Portugal, the general statute related to non-discrimination issues is Law 93/2017 of 23 August 2017,¹³⁵ which establishes the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial or ethnic origin, colour, nationality, ancestry and territory of origin within the scope of social protection, including in social security and healthcare, social benefits, education and access to and the supply of goods and services that are available to the public, including housing and culture. In this statute, neither 'advertising' nor 'media' are mentioned explicitly as a separate material area of non-discrimination. However, 'the adoption of an act whereby, publicly or with the intention of wide dissemination, a statement is issued or information is transmitted as a result of which a person or group of persons is threatened, insulted or demeaned on account of any of the factors listed in Article 1' is considered as discriminatory (Article 4(2)(j)). This provision includes both traditional media (TV, radio and print) and social media platforms.

The Portuguese legal framework regulating advertising contains specific rules aimed at protecting against discrimination. For example:

¹³³ Decree-Law 72/2008, 16 April 2006 (last amended by Law 147/2015 of 9 September 2015), available at: http://www.pqdliboa.pt/leis/lei_mostra_articulado.php?nid=2657&tabela=leis&so_miolo. Law 7/2019 of 16 January 2019, approving the legal framework of insurances and reinsurances and implementing Directive (EU) 2016/97, includes in Annex I Article 2(a) on minimal requirements such as age, not prohibiting differentiation on this ground. See: <https://dre.pt/home/-/dre/117821873/details/maximized>.

¹³⁴ Available at: <https://dre.pt/dre/LinkELI?search=lei/75/2021/11/18/p/dre>.

¹³⁵ Law 93/2017, 23 August 2017, available at: <https://dre.pt/application/conteudo/108038372>.

- Article 7(1) and (2) of the Advertising Code (approved by Decree-Law No. 330/90 of 23 October 1990,¹³⁶ which establishes the general rules regarding advertising and other commercial communications) states that advertising that, by its shape, object or purpose, offends constitutionally enshrined values, principles and institutions is prohibited. In particular, advertising that contains any discrimination based on race, language, territory of origin, religion or sex is prohibited (2, d).
- Under Article 27 of the Television and On-demand Audiovisual Media Services Law (approved by Law 27/2007 of 30 July 2007,¹³⁷ which regulates access to television and television activities), television programming shall respect the dignity of the human being, the specific rights of children and young people, as well as fundamental rights, freedoms and guarantees. (1) Audiovisual media services may not, through programming elements: a) Incite violence or hatred against groups of people or members of such groups on grounds of sex, race, colour or ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, wealth, disability, age, sexual orientation or nationality (2, a);
- In accordance with Article 30 of the Radio Law (approved by Law 54/2010 of 24 December 2010),¹³⁸ radio programming shall respect human dignity and fundamental rights, freedoms and guarantees. (1) Radio programme services may not, through the programming elements they broadcast, incite racial, religious or political hatred or hatred generated by colour, ethnic or national origin, sex, sexual orientation or disability (2).

Law 93/2017 does not explicitly cover advertisement/media content that has been delivered/targeted/shaped by an automated system.

However, Law 27/2021 of 17 May 2021, which approves the Portuguese Charter of Human Rights in the Digital Era,¹³⁹ regulates several matters related to the digital environment, such as the right to access to the digital environment without discrimination of any kind, such as ancestry, gender, race, language, territory of origin, religion, political or ideological beliefs, education, economic status, social status or sexual orientation (Article 3(1)); and the right to protection against all forms of discrimination and crime in cyberspace, in particular apology for terrorism, incitement to hate speech and violence against an individual or a group of individuals on the grounds of their race, colour, ethnic or national origin, ancestry, religion, sex, sexual orientation, gender identity or physical or mental disability, sexual harassment or sexual exploitation of children, female genital mutilation or persecution (Article 4(3)).

a) Distinction between goods and services available publicly or privately

In Portugal, national law distinguishes between goods and services that are available to the public (e.g. in shops, restaurants and banks) and those that are available only privately (e.g. those restricted to members of a private association).

For instance, Law 93/2017 is applicable to all goods and services available to the public. Goods and services available through private associations are excluded under the principle of freedom of association.

According to Decree-Law 594/74, as amended by Decree-Law 71/77,¹⁴⁰ private associations have the right to restrict the supply of goods and services to their members.

¹³⁶ Available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1990-34537375>.

¹³⁷ Available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2007-34561375>.

¹³⁸ Available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2010-73895551>.

¹³⁹ Available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2021-164870244>.

¹⁴⁰ Decree-Law 594/74, 7 November 1974, available at: <https://diariodarepublica.pt/dr/detalhe/decreto-lei/594-1974-471532>; Decree-Law 71/77, 27 September 1977, available at: <https://diariodarepublica.pt/dr/detalhe/decreto-lei/71-1977-141650>.

This means that distinctions can be made on the basis of membership. However, membership itself cannot be based on discriminatory criteria.

3.2.9 Housing (Article 3(1)(h) Directive 2000/43)

In Portugal, national legislation prohibits discrimination in the areas of housing as formulated in the Racial Equality Directive.

Discrimination related to access to housing is prohibited by Law 93/2017 (Article 2(1)(d)). The provision prohibits discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin.

As for other grounds, Article 2(1) of the Basic Law on Housing¹⁴¹ establishes that all have a right to housing for themselves and their families, regardless of ancestry or ethnic origin, sex, language, territory of origin, nationality, religion, belief, political or ideological convictions, education, economic situation, gender, sexual orientation, age, disability or health conditions. Gender identity/expression and sex characteristics are not mentioned, but they should logically be covered due to the constitutional principle of equality and non-discrimination – Article 13 (although there is no case law to support this interpretation).

Pursuant to Law 13/2019, a provision was inserted in the Portuguese Civil Code¹⁴² (Article 1067-A) on non-discrimination in respect of access to a lease. According to that Article, no-one can be discriminated against on the grounds of sex, ancestry or ethnic origin, language, territory of origin, nationality, religion, belief, political or ideological convictions, gender, sexual orientation, age or disability (1). It concluded that the announcement of a dwelling for lease cannot contain any restriction, specification or preference based on the discriminatory categories mentioned above (2). Therefore, it is illegal for a potential landlord to refuse to conclude a lease contract on the basis of the potential tenant's 'old age'. Gender identity/expression and sex characteristics are not mentioned, but they should implicitly be covered.

With regard to housing for persons with disabilities, Law 38/2004 of 18 August 2004,¹⁴³ which defines the general legal basis for the prevention of the causes of disability, and for the training, rehabilitation and participation of persons with disabilities, states that the state will adopt specific measures with the aim of ensuring the right to housing and access to private and public spaces for persons with disabilities (Article 32). The main goal of this Law is to integrate persons with disabilities into society, in order for them to be active in society and lead a normal life. As far as the built environment is concerned, it should be barrier-free and adapted to fulfil the needs of all people equally.

Article 4(c) of Law 46/2006 states that 'the refusal of or making conditional the sale, lease or sublease, as well as the access to bank loans for residential property purchases, and the refusal or penalty in the execution of insurance contracts' in relation to persons with disabilities will be considered as a discriminatory practice.

Mortgages are provided on special terms, provided that the property concerned is to be the permanent residence of the person with disabilities. There are also special loans available to adapt houses for persons with disabilities.

Regarding discrimination in housing in particular, a report from Casa do Brasil de Lisboa, *Immigration and discrimination on housing in Portugal*, published during 2024,¹⁴⁴ stressed

¹⁴¹ Law 83/2019, 3 September 2019, available at: <https://dre.pt/home/-/dre/124392055/details/maximized>.

¹⁴² Decree-Law 47344/66 (Civil Code), 25 November 1966, available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&tabela=leis&nversao=&so_miolo.

¹⁴³ Law 38/2004, 18 August, available at: <https://dre.pt/pesquisa/-/search/480708/details/maximized>.

¹⁴⁴ 'Imigração e discriminação na habitação em Portugal', available at: https://casadobrasildelisboa.pt/wp-content/uploads/2024/MM_relatorio2023_digital_v7.pdf.

that it was in the rental market (59.6 %) that the immigrants surveyed perceived the most discrimination.

The 2025 *ECRI Report* reveals an alarming incidence of homelessness among migrants, who also face xenophobia in the housing sector.¹⁴⁵

a) Trends and patterns regarding housing segregation for Roma

In Portugal, housing segregation and discrimination against the Roma exist, although it does not follow the same trends everywhere.

Social housing in Portugal is managed by the state, autonomous regions and municipalities. The state is responsible for setting housing budgets and defining regulations for the allocation of social dwellings, according to income-based criteria.

Given the universal right to housing programmes and the equality principle, which applies to all communities and ethnic groups, no specific measures have been proposed for Roma communities. Nevertheless, efforts have been undertaken, in order to ensure that Roma communities benefit from housing policies.

The difficulties connected with social housing in general (social housing covers still only 2 % to 3 % of the households in Portugal) make it difficult to solve the specific problem of rehousing Roma, thus requiring the displacement of Roma communities from encampments and shanty towns to social housing. Although there has been some improvement in the housing legislation in Portugal regarding access to housing and the creation of specific programmes for the increase of housing availability, it is not clear how this will impact the Roma community.

It has been estimated that many Roma communities live in shanty towns despite the Special Programme for Rehousing (*Programa Especial de Realojamento*) set up by the national authorities, which has enabled many Roma families to leave the shanty towns where they were living in Lisbon and Porto and move to decent housing. Nevertheless, in many cases, public housing programmes, whether they are national or municipal, have led to the concentration of Roma families and communities in the outskirts of urban areas, in neighbourhoods that are sometimes, in a clear exercise of territorial segregation, destined only or mainly for the Roma.

Some Roma communities still live in the most basic of encampments on the outskirts of towns, sometimes without any access to essential services such as water and electricity. No general or municipal policies on infrastructure for itinerant camps exist.

There are allegations of evictions from, and demolition of, Roma housing without any alternative accommodation being offered, which could, if such a case reached the courts, entail an offence in breach of the European Convention on Human Rights. No general recent data exist, although a new study on the Roma population in Portugal, including their housing conditions, was commissioned to start in 2024.¹⁴⁶ By 2025, it had still not been adopted.

The results of the external evaluation of the ENICC show that there was no progress in the analysed period (2018-2022). There continued to be discrimination in the rental market, forced nomadism¹⁴⁷ and evictions, and the existing social housing is degraded and ghettoised. The evaluation proposed promotion of self-construction, rent control and

¹⁴⁵ See <https://rm.coe.int/sixth-report-on-portugal/1680b6668d>.

¹⁴⁶ See <https://www.publico.pt/2024/04/07/sociedade/noticia/portugal-vai-novo-estudo-comunidades-ciganas-dez-anos-2086180>.

¹⁴⁷ See: <https://www.publico.pt/2023/06/23/infografia/portugueses-ciganos-forcados-vida-nomada-777>.

expansion of public housing.¹⁴⁸ Based on the ICOT of 2023, INE issued data related to the Roma community, according to which this population group had figures well below the national average for property ownership (30.6 % vs. 70.8 % in the total population) and thermal comfort of housing (46.8 % vs. 72.3 %), as well as internet access (74.2 % vs. 91.8 %) and car access (55.1 % vs. 75.6 %).¹⁴⁹

The ECRI 2025 Country Report on Portugal¹⁵⁰ regretted that no significant progress has been achieved in past years to improve the housing conditions of Roma. The findings during the 2024 visit to Portugal suggest that Roma continue to struggle with territorial segregation, discrimination in the rental market, inadequate and overcrowded social housing, and accommodation in shanty towns in undignified conditions and without access to basic services. ECRI recommended, as a matter of priority, that the authorities take prompt and resolute action to ensure decent and safe housing conditions for Roma people living in substandard settlements, including shanty towns, all while seeking long-term housing solutions for them, in close consultation with the Roma communities concerned.

¹⁴⁸ See <https://www.publico.pt/2024/01/11/sociedade/noticia/pessoas-ciganas-desconhecem-estrategia-pensada-integrar-2076379>. The report is no longer available online.

¹⁴⁹ Available at: https://www.ine.pt/ngt_server/attachfileu.jsp?look_parentBoui=673531125&att_display=n&att_download=y.

¹⁵⁰ See <https://rm.coe.int/sixth-report-on-portugal/1680b6668d>.

4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4 Directive 2000/43, Article 4(1) Directive 2000/78)

In Portugal, national legislation provides for an exception for genuine and determining occupational requirements.

The legislation on equality and non-discrimination in the workplace allows for some differences in treatment. Article 25(1) of the Labour Code in effect prohibits all practices of discrimination by the employer on the grounds listed. According to the Code, a difference in treatment that is based on a characteristic related to any of the grounds listed will not constitute discrimination if, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a justifiable and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate (Article 25(2)). Article 25(3) adds that 'in particular, differences of treatment on grounds of age which are necessary and appropriate to the achievement of a legitimate aim, such as employment policy, labour market or vocational training, are permitted'.

The same reasoning is accepted by Law 3/2011 concerning the prohibition of discrimination in access to and the exercise of self-employment (Article 4(4)) and by Law 46/2006, which prohibits and punishes discrimination based on disability and on a pre-existing risk to health (Article 5(3)).

The authors consider that national law complies with the directives as interpreted by the updated CJEU caselaw on this matter (notably C-157/15 *Achbita*, C-188/15 *Bougnaoui* and C-148/22 *Commune d'Ans*, as well as C-229/08 *Wolf*).

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Portugal, national law does not explicitly provide for an exception for employers with an ethos based on religion or belief. However, this exception can be derived from a combination of several legal provisions and would, naturally, require judicial interpretation to be asserted.

First, the refusal to hire a person on the grounds of his/her religion comes under the scope of the prohibition of discrimination laid down by Article 24 of the Labour Code, although Article 25(2) of the Code states:

'It does not constitute any discrimination when the behaviour based on a discrimination factor that constitutes a justifiable and determining occupational requirement for the exercise of the profession, given the nature of the activity in question or the context of its implementation, where it is objectively justified by a legitimate aim and the means of achieving that aim are proportionate'.

Religion or belief may arguably be considered a justified discrimination factor, provided the employer has an ethos based on such religion or belief and that the activities undertaken by the employee or to be undertaken by an applicant are in strict connection with that ethos.

Secondly, as a general rule, Article 53 of the Constitution prohibits dismissal without fair cause or for political or ideological reasons. Dismissal with just cause / based on disciplinary reason only occurs when an employee commits a disciplinary offence that is serious, and its consequences make it immediately and practically impossible for the employment contract to remain in force. In this respect, the situation of the employer, the

character of the relationship between the parties or between the worker and his/her co-workers and any other relevant circumstances – the type of organisation, the nature of the job – must be taken into consideration to examine the impossibility of the continuation of the employment relationship. It can be deduced that conflicts between organisations with an ethos based on religion and belief and their employees would be solved on the basis of the same principle and that the organisation's ethos and the nature of the activities can be criteria to justify a disciplinary dismissal due to a serious breach of loyalty and good faith. Article 351 could also be applicable when there is an 'ideological' conflict between the worker and the organisation (for instance, a trade union or a political party), but as it is an issue of just cause for dismissal, that would have to be the subject of a court ruling.

Finally, Article 3 of the Law on Religious Freedom (Law 16/2001) states that churches are free to organise themselves, exercise their functions and provide church services. The freedom of organisation may lead to not hiring a worker with a different religion or belief.

The same reasoning applies to other organisations with an 'ethos', such as political parties and philosophical organisations. A decision on the effect of a contradiction between the convictions of an individual and the ethos of an organisation on the loyalty of the individual has to be taken by the courts, but so far there have been no examples. The issue must be solved on a case-by-case basis.

So far, religious entities have in practice benefited from discretion in hiring or dismissing any worker who does not conform to their professed religion, stated beliefs or religious ethos in general, and the same applies to political parties.

The Catholic Church in Portugal can also select religious teachers in state schools to administer Catholic religious and moral education (*educação moral e religiosa católica*), which is an optional discipline. The recruitment of and necessary qualifications for teachers of Catholic religious and moral education are covered by Decree-Law 70/2013.¹⁵¹ It establishes the legal regime for the teaching and organisation of Catholic religious and moral education at state primary and secondary schools, under the terms of the 2004 Concordat between the Portuguese state and the Vatican, which was signed on 18 May 2004 and approved by Resolution of the Assembly of the Republic 74/2004 of 16 November 2004.

According to Article 24(1) of Law 16/2001 (Law on Religious Freedom), churches and other religious communities (whether individually or in conjunction, if they profess a single confession or agree on a common programme) may demand from the competent Government ministry opportunity to administer religious teaching in the state primary and secondary schools they indicate.¹⁵²

Portuguese law and practice respects Directive 2000/78, as interpreted by the updated CJEU case law on this matter (notably C-414/16, *Egenberger*, and C-68/17, *IR*), Nonetheless, there is no relevant case law.¹⁵³

¹⁵¹ Available at: <https://dre.pt/application/file/261022>.

¹⁵² This possibility, along with the optional nature of the discipline of Catholic religious and moral education, tends to result in a balance between the majority Catholic Church and the principles of religious freedom. Before these changes, however, the Constitutional Court had in several instances affirmed the potential positive treatment of the Catholic Church in educational establishments (ultimately, in Decision No. 174/98, available at <https://www.tribunalconstitucional.pt/tc/acordaos/19930174.html>).

¹⁵³ Also pointing to this absence, see: <https://www.jn.pt/nacional/portugal-sem-casos-significativos-de-discriminacao-por-motivos-religiosos-13591612.html>, based on the 2021 report, *Religious Freedom in the World*.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, Directive 2000/78)

In Portugal, national legislation does not provide for a specific exception for the armed forces in relation to age or disability discrimination (Article 3(4) of Directive 2000/78/EC), but the conditions for access inevitably limit employment on the basis of age and physical ability.

In Portugal, Law 1-B/2009 of 7 July¹⁵⁴ (the Law on National Defence) regulates the Armed Forces. Under Article 22, the Armed Forces are the national institution charged with ensuring the military defence of the Republic (1). The Armed Forces are subordinate to the competent bodies of sovereignty, as defined in the Constitution and the law (2). The Armed Forces are at the service of the Portuguese people and are strictly non-partisan (3). The Armed Forces shall consist exclusively of Portuguese citizens, and their organisation is unified across the entire national territory (4).

There are also no provisions or exceptions relating to employment in the police, prison or emergency services. However, the physical ability required may limit access to employment.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the grounds of nationality

In Portugal, nationality (as in citizenship) is explicitly mentioned as a protected ground in national anti-discrimination law.

Discrimination on the grounds of nationality is forbidden in Article 13 of the Constitution.

Article 1 of Law 93/2017 forbids discrimination on the grounds of nationality. In the housing field, Law 83/2019 includes nationality as an explicitly protected ground (Article 2).

The Labour Code explicitly states that discrimination on the grounds of nationality is forbidden in access to employment and work (Article 24(1)). This includes stateless status (Articles 4 and 24(3)(a)). Article 4 of the Code grants foreign workers and stateless individuals equal rights with Portuguese citizens, provided that they are legally permitted to work in the country. They must have a written contract of employment (Article 5(1) of the Labour Code) and produce documents proving that they have a work or residence permit (Article 5(1)(b) of the Code).

Law No. 2/2021 of 21 January 2021¹⁵⁵ establishes the regime for access to and exercise of professions and professional activities and the regime applicable to the assessment of proportionality prior to the adoption of legislative provisions limiting access to or exercise of a regulated profession, or to be regulated, transposing Directive (EU) 2018/958 of the European Parliament and of the Council. Article 4(5) establishes that legislative provisions limiting access to or the exercise of professions or professional activities may not be discriminatory, directly or indirectly, in particular on grounds of nationality or place of residence.

Article 16(3) of Decree-Law No. 105/2021 of 29 November 2021, which approves the Statute for Professionals in the Cultural Area, prohibits discrimination based on nationality (among other factors).¹⁵⁶

¹⁵⁴ See <https://data.dre.pt/eli/declrectif/52/2009/p/cons/20210809/pt/html>.

¹⁵⁵ Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3375&tabela=leis&nversao=&so_miolo=.

¹⁵⁶ Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3480&tabela=leis&so_miolo=.

Despite the constitutional principle of equivalence between Portuguese citizens and foreigners, stateless persons and EU citizens, national law still includes some exceptions relating to difference of treatment based on nationality.

Article 15 of the Constitution, on foreign nationals, stateless persons and European citizens, states that foreign nationals and stateless persons who find themselves or who reside in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens.

However, political rights, the exercise of public functions that are not predominantly technical in nature and the rights and duties that the Constitution and the law reserve exclusively for Portuguese citizens are excepted from the provisions of the previous paragraph. The General Labour Law in Public Functions (Law No. 35/2014 of 20 June 2014), establishes, in its Article 17, that public employment contract depends on the worker meeting certain requirements, including, among them, Portuguese nationality. However, the same Article also states that Portuguese nationality for the performance of public functions may only be required in the situations provided for in Article 15(2) of the Constitution. This does not apply to citizens of Portuguese-speaking states who reside permanently in Portugal.

Appointment to the offices of President of the Republic, President of the Assembly of the Republic, Prime Minister and President of any of the supreme courts, and service in the armed forces and the diplomatic corps are, in principle, restricted to Portuguese citizens.

Under reciprocal terms, the law may accord foreigners who reside in Portugal the eligibility to vote in elections and stand for election as office-holders of local authority bodies. Under reciprocal terms, the law may also accord citizens of European Union Member States who reside in Portugal the eligibility to vote in elections and stand for election as Members of the European Parliament.

As regards citizenship, Organic Law 2/2020 of 10 November 2020 amended Law 37/81 of 3 October 1981, the Portuguese Law on Nationality,¹⁵⁷ and introduced novel provisions in respect of access to Portuguese nationality, making it easier for children of foreigners to acquire it. For instance, those who, at the moment of their birth in Portugal, had one of their parents legally residing in Portugal or having resided here, irrespective of the title, for at least one year, are now considered to be Portuguese citizens of origin.

However, in 2024, an amendment to the Portuguese Law of Nationality was introduced by Organic Law 1/2024 of 1 March 2024, which made it harder for descendants of Portuguese Sephardic Jews to acquire Portuguese nationality. This legislation was unsuccessfully challenged before the Constitutional Court not on the grounds of non-discrimination but on the violation of the principle of legitimate trust (Decision 128/2024 of 20 February 2024¹⁵⁸).

In 2025, Decree of the Assembly of the Republic No. 17/XVII proposed significant, stricter amendments to the Portuguese Law of Nationality, which included measures to extend residency requirements to 10 years for most persons. Nevertheless, the Constitutional Court (Decision 1133/2025 of 15 December 2025)¹⁵⁹ declared several provisions of the Decree to be unconstitutional, on the grounds that they violated constitutional principles, albeit not the principle of equality. Following this decision, the President of the Republic vetoed the Decree, which will now return to the Assembly of the Republic for further consideration. Regarding loss of nationality due to criminal convictions, Decision 1134/2025 of the Constitutional Court considered that there was a breach of the equality principle between nationals, depending on the mode of acquiring nationality.¹⁶⁰

¹⁵⁷ Available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=614&tabela=leis.

¹⁵⁸ Available at: <https://www.tribunalconstitucional.pt/tc/acordaos/20240128.html>.

¹⁵⁹ See <https://www.tribunalconstitucional.pt/tc/acordaos/20251133.html>.

¹⁶⁰ Available at: <https://www.tribunalconstitucional.pt/tc/acordaos/20251134.html>.

b) Relationship between nationality and 'racial or ethnic origin'

There is no judicial case law concerning the relationship between nationality and racial or ethnic origin, but discrimination on grounds of nationality may also constitute direct or indirect discrimination on grounds of ethnic origin, as has been the case with complaints of multiple discrimination within CEARD.

4.5 Health and safety at work (Article 7(2) Directive 2000/78)

In Portugal, there are exceptions in relation to disability and health and safety at work (Article 7(2), Directive 2000/78/EC).

An employer can exclude a person with disabilities on the grounds that the work will pose a risk to that person's health and safety. It is not for individuals with disabilities to decide for themselves that they wish to accept the health and safety risks, as the employer will not be excluded from liability if the person with disabilities suffers any harm in such circumstances (Articles 126 and 127 of the Labour Code). It is the employer who assesses what measures are needed to protect the health and safety of employees with disabilities as there is no prerequisite expert advice on this issue.¹⁶¹

The situation can be reviewed by ACT, the General Health Inspectorate (*Inspecção de Saúde da Direcção Geral de Saúde*) and the labour courts (a person with disabilities can challenge an employer's decision before the labour courts).

Law 38/2004 sets out the general legal basis for the prevention of the causes of disability and the training, rehabilitation and participation of persons with disabilities (Articles 4 to 15).

Articles 85-88 of the Labour Code contain provisions that seek to ensure the health and safety of persons with disabilities at work and to secure better integration and adaptation to enable them to work.

There are no exceptions relating to health and safety law in relation to other grounds. The law does not mention issues connected to dress or personal appearance.

4.6 Exceptions related to discrimination on the grounds of age (Article 6 Directive 2000/78)

4.6.1 Direct discrimination

a) Justification of direct discrimination on the grounds of age

In Portugal, national law allows for specific justifications for direct discrimination on the grounds of age.

Article 25(3), in connection with Article 25(2) of the Labour Code, states that

'...differences of treatment on the grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and

¹⁶¹ According to the Portuguese Labour Code, the employer cannot require a candidate or an employee to provide information on health status, unless justified by the particular requirements inherent in the nature of the professional activity and provided by a physician in writing with grounds. In addition, the employer is not allowed to ask job applicants to take medical exams, except with the purpose of protection and safety of the employee or of third parties, or when particular requirements inherent in the nature of the professional activity so justify and must in any case be provided in writing (Articles 17 and 19).

vocational training objectives, and if the means of achieving that aim are appropriate and necessary’.

This corresponds to the exact wording of the Directive.

Legal rules or collective agreements that fall within Article 25(3) must nevertheless be periodically evaluated and modified if they are no longer justifiable (Article 25(4)).

Portuguese law complies with the Directive and with the jurisprudence of the CJEU, but it does not list potential legitimate aims (as in Article 6 of the Directive).

In the Portuguese Constitutional Court’s decision No. 526/2016 of 4 October 2016, the Court stated – merely as an *obiter dictum* – that age does not figure among the causes that justify the application of Article 13(2) of the Constitution, but nonetheless used terms such as ‘unfounded discrimination’. It established, however, that there is a consistent case-law line according to which, regarding age, differences in treatment should be justified rationally and objectively in reasonable terms, and there should be a sufficient substantial reason behind the measure that neutralises arbitrariness and eliminates unfounded discrimination. Recently, in the decisions of the Constitutional Court regarding the pardon of penalties and amnesty for offences on the occasion of World Youth Day held in Portugal,¹⁶² the same idea has surfaced: that a potential age discrimination will be appraised on the basis of a reasonableness test and not a strict proportionality test. Furthermore, on 22 May 2024, a decision of the Supreme Court of Justice in Proc. n. 33/12.4TTCVL.7.C1.S1¹⁶³ established that a bonus for a disability factor applicable only to persons aged 50 or more is not censurable, since ‘we are dealing with situations in which access to the job market is more difficult than it would be for a worker who is also a victim of an accident at work or an occupational disease, but who is still retrained or of a younger age. As the relative positions of the workers are different, there is no violation of the principle of equality, as this presupposes that we are dealing with equivalent situations’.

b) Permitted differences of treatment based on age

National law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78/EC.

Article 25(2) and (3) of the Labour Code admits differences of treatment on the grounds of age if they are:

‘objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary’.

This corresponds to the exact wording of the Directive.

No list of permitted differences in treatment is explicitly mentioned in the Portuguese legislation.

c) Fixing of ages for admission to occupational pension schemes

National law allows occupational pension schemes to fix ages for admission to the scheme, taking up the possibility provided for by Article 6(2) of the Directive.

In the case of occupational pension schemes, it is possible under Portuguese legislation to fix ages for admission to a scheme to benefits under it. Pension schemes must respect the

¹⁶² Decisions 471/2024 of 19 June 2024, 808/2024 of 7 November 2024 and 898/2024 of the Constitutional of 11 December 2024.

¹⁶³ Available at: <https://diariodarepublica.pt/dr/detalhe/lei/3-2024-836604892>.

principle of non-discrimination, but they can fix ages for admission if these can be justified under the conditions of the specific pension scheme. The most common fixed ages are 60, 62 and 65.

4.6.2 Special conditions for younger or older workers

In Portugal, there are special conditions set by law for younger and older workers in order to promote their vocational integration. Over the years, Portugal has established initiatives and measures to reduce youth unemployment and/or early departure from the education and training systems.

In 2012, in response to the fast-growing unemployment rate among young people, the Portuguese Government approved a 'Strategic Plan of Initiatives for the Promotion of the Employability of Young People and the Support to SMEs' (*Impulso Jovem*). The majority of measures included in this high-priority programme for the Government were later integrated in the Portuguese plan for the implementation of the youth guarantee. Implementation of this plan started in January 2014, targeting people aged under 30. The Portuguese youth guarantee plan includes an extensive list of measures to promote employment, education and training, traineeships, entrepreneurship and mobility, such as vocational guidance; job-search and career management training; the development of soft skills and individual counselling actions to match profiles; traineeships (in Portugal and abroad); direct placement in the labour market; hiring incentives; support for entrepreneurship and self-employment and the creation of small businesses; and support for transnational mobility. For instance, according to Decree-Law 72/2017 of 21 June 2017, employers may obtain an exemption from payment of social security if they hire young people (aged under 30) or unemployed persons (unemployed for more than 24 months) aged 45 or over.

In 2018, the Portuguese Government approved the implementation of measures published in the 2018-2021 National Youth Plan.¹⁶⁴ Concerning employment, the priorities are to promote the realisation of the right to decent and inclusive employment; universalise faster and better access to a first job; and combat precarious employment, with a view to the sustainability of the emancipatory process and the creation of autonomy for young people.

In 2020, to face the economic and social impacts of the COVID-19 pandemic, the Government established as one of the priority axes of the Economic and Social Stabilisation Programme (*Programa de Estabilização Económica e Social*), approved by the Resolution of the Council of Ministers 41/2020 of 6 June 2020, the maintenance of employment and the gradual recovery of economic activity. In this context, the measure 'ATIVAR.PT – Enhanced Support Programme to Employment and Vocational Training' was created. This Programme aims to ensure an adequate and rapid response with support programmes for hiring and internships, in combination with programmes for specific sectors and groups. It includes two policy measures: a) ATIVAR.PT Internships; b) ATIVAR.PT Incentive.

Ordinance 206/2020 of 27 August 2020 regulates the measure ATIVAR.PT Internships, which consists of supporting the insertion of young people (up to 29 years), older workers (aged 45 or over) and other specific groups into the labour market or the professional rehabilitation of these groups, through practical experience in a work context.

Ordinance 207/2021 of 27 August 2020 regulates the measure ATIVAR:PT Incentive, a financial support to employers who enter into open-ended or fixed-term work contracts with unemployed people – young people, people aged 45 and over and other specific groups – registered in the Instituto de Emprego e Formação Profissional, or IEFP (Institute for Employment and Vocational Training). These contracts must have a minimum duration of 12 months and provide mandatory vocational training to the contracted workers.

¹⁶⁴ Resolution of the Council of Ministers 114-A/2018, 4 September 2018, available at: <https://dre.pt/dre/detalhe/resolucao-conselho-ministros/114-a-2018-116330692>.

In 2021, also in response to the fast-growing unemployment rate among young people during the COVID-19 pandemic, the Portuguese Government approved the 'Sustainable Employment Commitment'¹⁶⁵ and regulated it through Ordinance 38/2022 of 17 January 2022.¹⁶⁶ The objectives of this investment are the creation of permanent and quality labour contracts under the Sustainable Employment Commitment programme, and the reduction of labour market segmentation among all groups, including youth. In order to speed up return to employment, employers are given temporary subsidies in exchange for offering open-ended contracts paying adequate wages.

Ordinance 220/2024/1 of 23 September 2024¹⁶⁷ revoked Ordinance 38/2022 and introduced a new +Emprego ('more employment') programme, which consists of granting the employer financial support for the conclusion of an open-ended, full-time employment contract with an unemployed person registered with the IEFP. This measure is not just intended for young people, although additional support of 35 % can be given to employers that hire people aged 35 years or younger (alongside people with disabilities, etc.).

Other programmes include Programa PESSOAS 2030, which, through the European Social Fund + (ESF+), supports measures promoting more and better employment, especially for young people,¹⁶⁸ and Programa Avançar for young unemployed people with a high level of qualifications.¹⁶⁹

The Sustainable Employment Commitment and the Avançar programme were recently revoked.¹⁷⁰ However, Resolution No. 134/2025 of 9 September 2025 aims to reinforce the Youth Guarantee, with the purpose of promoting an integrated, effective response tailored to the reality of young people in Portugal.

4.6.3 Minimum and maximum age requirements

In Portugal, there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training.

In the private sector, the normal minimum age for access to employment is 16 years (Article 68(2) of the Labour Code). According to Article 68(3) of the Code, minors under 16 years of age are allowed to work provided that they have already finished compulsory education and the tasks set are simple and will not damage their health and personal development. Article 72(2) of the Labour Code prevents those under 18 years of age from undertaking activities 'which, by their nature or the circumstances in which they are provided, are harmful to the physical, mental and moral development of minors'.

Regarding the public sector, the General Labour Law in Public Functions (Law No. 35/2014 of 20 June) determines that the normal minimum age requirement for public servants is 18.

For some types of public service, such as the army or the police, there is an age limit for access to employment. The maximum age for enlistment in Portugal's security forces is currently 35 years for the Public Security Police (PSP). For the National Republican Guard

¹⁶⁵ Resolution of the Council of Ministers 188/2021, 16 December 2021, available at: https://portugal2020.pt/wp-content/uploads/rcm188_2021.pdf.

¹⁶⁶ Available at: <https://data.dre.pt/eli/port/250-a/2020/10/23/p/dre/pt/html>.

¹⁶⁷ Available at: <https://diariodarepublica.pt/dr/detalhe/portaria/220-2024-888585890>.

¹⁶⁸ See: <https://pessoas2030.gov.pt/tag/cursos-de-educacao-e-formacao-de-jovens/>. It should be noted that the implementation of this programme was accompanied by the *Report on the Integration of horizontal Principles, such as Non-Discrimination*, published in October 2024 (available at: <https://pessoas2030.gov.pt/wp-content/uploads/sites/19/2024/12/CES-Relatorio-Final-1.pdf>).

¹⁶⁹ See: https://www.iefp.pt/documents/10181/12121809/Ficha+Sintese+AVANCAR_29-01-2024.pdf/3732d64a-0f43-4b65-940e-24f107f3719b.

¹⁷⁰ On existing and elapsed funding opportunities, see <https://www.iefp.pt/medidas-revogadas-em-execucao>.

(GNR), the limit is set at 27 years. Within the Armed Forces, age limits range from 24 to 30 years, depending on the specific rank and academic qualifications.

For legal professions – judges, prosecutors, lawyers, notaries, bailiffs and judicial mediators or judicial referees, for example – there is no minimum requirement for the exercise of the profession. However, the length of the required academic training means that entrance into the exercise of the professions will not occur below the ages of 22 to 25.

The maximum age for the exercise of the said professions is dictated by the age of the mandatory retirement. That means nobody should accede to legal professions after the age of retirement, with the exception of lawyers, who may be allowed to continue practising by the Bar Association (Ordem dos Advogados).

Doctors who hold management or supervisory positions or who are over the age of 55 shall be exempted from emergency duty, if they so request. Doctors are also exempted, if they so wish, from performing night emergency services from the age of 50 (Article 31(13) and (14) of Decree-Law 73/90, 6 March 1990.¹⁷¹

4.6.4 Retirement

a) State pension age

In Portugal, there is a state pension age at which individuals can begin to collect their state pension.

For private and public sector workers, the state pension age in 2025 was 66 years and 7 months (Ordinance 414/2023, 7 December¹⁷²).

In accordance with Decree-Law 119/2018, a flexibility rule was introduced, according to which a beneficiary who has fulfilled the guarantee period and is at least 60 years of age and who, while at that age, has 40 or more years of remuneration record relevant for the calculation of the pension, will be entitled to start receiving the state pension.

In 2022, the Portuguese Parliament approved Law 5/2022,¹⁷³ which created the old-age pension anticipation scheme for persons with disability, aged 60 years or over, who have at least 15 years of contributory career constituted when working with a degree of disability equal to or greater than 80 %. In 2023, the Portuguese Government regulated the old-age disability pension scheme, establishing the terms and conditions of access (Decree-Law 18/2023 of 3 March 2023).¹⁷⁴ This scheme aims to improve a better social protection for persons with disabilities, who made up all or a significant part of their contributory career through the exercise of professional activity while they had a high degree of disability. The measure is designed for those situations in which the maintenance of professional activity may have a negative impact on the health conditions of the person with disabilities, not compensating by the social, economic benefits and the formation of contributory rights resulting from remaining in the labour market.

If a person wishes to work beyond the state pension age, the pension can be deferred.

¹⁷¹ Available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1990-138058977>.

¹⁷² Available at: <https://data.dre.pt/eli/port/414/2023/12/07/p/dre/pt/html>. According to the new Ordinance (Ordinance 358/2024 of 30 December 2024), the state pension age in 2026 will be 66 years and 9 months. See: <https://data.dre.pt/eli/port/358/2024/12/30/p/dre/pt/html>. In 2027 the state pension age will be 66 years and 11 months, according to Ordinance 476/2025/1 of 29 December 2025, <https://data.dre.pt/eli/port/476/2025/12/29/p/dre/pt/html>.

¹⁷³ Law 5/2022 of 7 January 2022, available at: <https://data.dre.pt/eli/lei/5/2022/01/07/p/dre/pt/html>.

¹⁷⁴ Available at: <https://files.dre.pt/1s/2023/03/04500/0004000043.pdf>.

In the public sector, deriving from Decree-Law 6/2019 of 14 January 2019,¹⁷⁵ an individual can collect a pension and still work, if extension of the work relationship is permitted. In the private sector, there is no prohibition on simultaneous collection of pensions and salaries.

b) Occupational pension schemes

In Portugal, occupational social security schemes, regulated under Law No. 27/2020, 30 July, are rare due to the universal scope of the general public social security system.

In Portugal, there is no normal age at which people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

In the private sector, if an individual wishes to work for longer, payments from such occupational pension schemes can be deferred.

An individual can collect a pension and still work, subject to agreement between the parties. The normal age range to start receiving payments from occupational pension schemes is between 60 and 65 years of age.

c) State-imposed mandatory retirement ages

In Portugal, there is a state-imposed mandatory retirement age for public employees, with discretion to extend.

The mandatory retirement age is 70 years in the public sector (Article 292 of the General Labour Law in Public Functions). However, Decree-Law 6/2019¹⁷⁶ has permitted the extension of the work relationship in the public sector whenever there is a justified public interest. The provision (Article 294-A) of the General Labour Law in Public Functions states that the relationship can be continued as a fixed-term employment contract (or limited executive tenure), upon request by the employee, if it is in the public interest. The fixed-term contract may be concluded for a period of not less than six months, renewable up to a maximum overall period of five years. This provision applies to workers who have a public employment legal relationship in the public administration, as defined under General Labour Law in Public Functions (which includes general regime careers). Special regime careers (the Military; the Foreign Office; State Security Information; Criminal Investigation; Public Security; Inspection Activities, etc.) are governed according to specific contents and functional duties in special legislation.

For private employees, there is no mandatory retirement age.

However, special statutes exist. For instance, the retirement age for lawyers is 65. Even if lawyers are retired, they may be allowed to continue practising by the Bar Association.

No changes are foreseeable in the near future.

d) Retirement ages imposed by employers

In Portugal, in the public and private sector, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract or collective bargaining or unilaterally.

If an employer wishes a worker to retire at, for example, 65 years of age, this has to be justified as if it were a dismissal.

¹⁷⁵ Available at: <https://dre.pt/home/-/dre/117754017/details/maximized>.

¹⁷⁶ Decree-Law 6/2019, 14 January 2019, available at: <https://dre.pt/home/-/dre/117754017/details/maximized>.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers, even if they remain in employment after attaining pensionable age or any other age.

However, Article 348 of the Labour Code states that when an employee reaches the age of 70, their permanent work contract is turned into a fixed-term contract. The duration of his/her employment contract will be six months on a renewable basis, subject to termination with 60 days' notice (Article 348(2)(c)). The majority of the doctrine and judicial decisions consider that the conversion of an employment contract into a fixed-term contract after the age of 70, provided for in Article 348 of the Labour Code, applies only to the employees who remain employed by the same employer.

f) Compliance of national law with CJEU case law

In Portugal, national legislation is in line with the CJEU case law on age regarding mandatory retirement.

There have been cases concerning Article 348 of the Labour Code,¹⁷⁷ but they have not ascertained its compliance with the Directive and with CJEU case law.¹⁷⁸ Indeed, the decisions of the Portuguese Constitutional Court on this issue date back to 1995;¹⁷⁹ the issue of discrimination was solved easily back then, once the requirement for those aged 70 years or more was generally applicable to all persons of that age.

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Portugal, national law permits seniority to be taken into account in selecting workers for redundancy. Extinction of a job position is applicable when the company lacks grounds to proceed with a collective dismissal because an insufficient number of employees are involved (i.e. the company has more than 50 employees and the closing of the section affects only 3 employees) in a redundancy caused by market, structural or technological motives (Article 367 of the Labour Code).

In practical terms, age is not taken into account, but seniority is. In fact, if there are at least two similar work positions that may be extinct, the employer must comply with a sequence of non-discriminative legal criteria in order to select which employees will be affected by the dismissal: a) Worst performance evaluation, according to an appraisal system and criteria previously known to all the affected employees; b) Least academic and professional qualifications; c) Bigger burden in terms of costs for the company; d) Less experience in the job; e) Less seniority in the firm (Article 368 of the Labour Code).

b) Age taken into account for redundancy compensation

In Portugal, national law provides compensation for redundancy. Such compensation is not affected by the age of the worker. As has been mentioned, what counts is seniority.

¹⁷⁷ Supreme Court of Justice, judgment of 21 September 2017, procedure No. 31971/15.1T8LSB.L1.S1, available at: <http://www.dgsi.pt/jsti.nsf/954f0ce6ad9dd8b980256b5f003fa814/f3a262ab2476bd93802581a300347941?OpenDocument>.

¹⁷⁸ See CJEU, *Palacios de la Villa*, Case C-411/05 (ECLI:EU:C:2007:604) and *Hörnfeldt v. Posten Meddelande AB*, Case C-141/11 (ECLI:EU:C:2012:421).

¹⁷⁹ Constitutional Court, judgment of 31 October 1995, No. 581/95, available at: <https://www.tribunalconstitucional.pt/tc/acordaos/19950581.html>; Constitutional Court, judgment of 14 December 1995, No. 747/95, available at: <https://www.tribunalconstitucional.pt/tc/acordaos/19950747.html>.

Employees subject to collective dismissal, dismissal resulting from job extinction or failure to adapt to the job position are entitled to 12 days' basic remuneration and seniority payments for each full year's work. In the case of part of a year, the amount is calculated proportionately (Article 366 of the Labour Code).

4.7 Further exception necessary in a democratic society: Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Portugal, national law implicitly includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

The laws implementing the directives do not include any specific exceptions concerning public security, public order, prevention of criminal offences, protection of health or protection of the rights and freedoms of others, but these exceptions seem to be implicit.

Generally speaking, such exceptions can be considered as restrictions to fundamental rights. Therefore, Article 18 of the Constitution may be invoked. The law may restrict rights, freedoms and guarantees only in cases provided for in the Constitution, but the restrictions must be limited to what is necessary to safeguard other rights or interests that are protected by the Constitution. Limitations to the main fundamental rights on the basis of public security, public order or similar are accepted by constitutional law experts, but they differ with regard to the extent of the limitations.

No exceptions under this heading are provided for in the Labour Code.

Over the years, there was a very active debate regarding the possibility for homosexual men to donate blood, since, in the absence of a very specific provision in law, several practices, sometimes contradictory, ensued.¹⁸⁰ This situation ended in 2021, when Law 85/2021 of 15 December¹⁸¹ was adopted. It changes the Statute of Blood Donors and determines that anyone who meets the eligibility criteria defined by a decree of the Ministry of Health may donate blood, and that this eligibility criteria will not discriminate against blood donors on the basis of their sexual orientation, gender identity and expression or sexual characteristics.

4.8 Any other exceptions

In Portugal, there are no other exceptions to the prohibition on discrimination (on any grounds covered by this report) provided in national law.

¹⁸⁰ See: <https://www.publico.pt/2021/01/31/politica/noticia/homossexuais-impedidos-doar-sangue-apesar-lei-permitir-nesse-dia-deixei-salvar-vida-1948617>.

¹⁸¹ Available at: <https://dre.pt/dre/detalhe/lei/85-2021-175923953>.

5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Portugal, positive action is permitted, although it is not compulsory, in national law in respect of racial or ethnic origin, religion or belief, disability, age and sexual orientation.

Article 13 of the Constitution permits positive action on the grounds of racial or ethnic origin, religion or belief and sexual orientation. Age and disability are not expressly mentioned, but as the enumeration is exemplificative, they are deemed to be included therein.

Articles 69 to 72 of the Constitution provide for positive actions on the grounds of age (childhood, youth and old age) and disability.

Article 2(3) of Law 93/2017 allows for positive action measures based on the following grounds: racial or ethnic origin, nationality, ancestry and territory of origin.

Article 27 of the Labour Code states that positive action measures are not discriminatory. According to this provision, legislative measures will not be considered discrimination if they are of a specifically defined temporary nature and benefit certain disadvantaged groups, including groups defined by reference to gender, reduced working capacity, disability or chronic illness, nationality or ethnic origin, and if they are enacted with the aim of guaranteeing the exercise, in conditions of equality, of the rights provided for in the Code and of correcting a situation of factual inequality that persists in society.

The law does not set any requirements that must be met in order for positive action to be implemented, e.g. necessity/proportionality.

Article 3(b) of Decree-Law 46/2006 on disability uses the term 'positive discrimination'; but Law 38/2004, on the same grounds, establishes that persons with disability should have access to positive action measures, in order to correct a factual inequality situation that persists in social life (Article 6(2)).

Religion/belief

In practice, there are no specific positive measures in respect of religion/belief.

Sexual orientation

The Action Plan to Combat Discrimination on the grounds of sexual orientation, identity and gender expression and sexual characteristics (PAOIEC), that was adopted for the period 2023-2026, under Council of Ministers Resolution No. 92/2023 of 14 August 2023,¹⁸² establishes, in Measure 32, the specific objective of promoting specialised support services to prevent and combat discrimination and violence based on SOGIESC – sexual orientation, gender identity and expression, and sex characteristics. According to the 2024 monitoring report, seven specialist support services for LGBTI+ people were in operation, providing care, shelter and empowerment, in partnership with the National Network of Support to Victims of Domestic Violence.¹⁸³

Disability

Regarding disability, Articles 85 to 88 of the Labour Code refer to workers who have a disability or a chronic disease or cancer. With regard to promoting employment opportunities for persons with disabilities, Article 85(2) provides that the state will create

¹⁸² Available at: <https://files.diariodarepublica.pt/1s/2023/08/15700/0001200092.pdf>.

¹⁸³ Available at: <https://www.cig.gov.pt/wp-content/uploads/2025/07/REL-Anual-2024-Apresentacao.pdf>.

incentives for hiring persons with disabilities or chronic diseases. According to Article 85(2) and Article 86(2), the state will also adopt policies on employees who have newly acquired disabilities or chronic diseases. These policies will give employers incentives to adopt measures to help such people to retain their employment in the context of developing a strategy for managing disability in the workplace. As regards this support, Decree-Law 290/2009 of 12 October 2009 established the employment and skills assistance programme for persons with disabilities (PEAQPD) and approved the scheme providing technical and financial assistance for the development of employment and skills assistance policies for persons with disabilities. The measures include assistance in relation to skills, aid schemes for integration, retention and reintegration in the labour market and subsidised employment. Indeed, this programme provides several measures, and specific guidance, to support persons with disabilities who experience difficulties in beginning and making progress in their careers.¹⁸⁴

In 2020, the programme entitled 'ATIVAR.PT – Enhanced Support Programme to Employment and Vocational Training' aimed to ensure an adequate and rapid response through support programmes for hiring and internships, in combination with programmes for specific sectors and groups. Ordinance 206/2020 of 27 August 2020 regulates the measure for ATIVAR.PT internships. This measure is addressed at assisting all unemployed persons. However, specific conditions apply to some groups, including those with disabilities or impairments (Article 3(1)(d)); for instance, the promoter entity that integrates trainees with disability or impairment will see the internship duration extended for 3 more months, from 9 to 12 months (Article 8); every trainee with disability or impairment is entitled to: a monthly internship grant, meal or meal allowance, transportation between his/her residence and the location where the internship will take place or transportation allowance, and insurance against accidents at work (Article 11).

Law No. 13/2023 of 3 April 2023 introduced amendments to the Labour Code, Law No. 105/2009 of 14 September 2009 (Labour Code Regulation), Decree-Law No. 66/2011 of 1 June 2011 and the Social Security Contributions Code. The amendments to the Portuguese Labour Code include measures to support informal caregivers from a labour law point of view (remote work, part-time work, flexible work arrangements), which will be relevant in disability situations. The Informal Caregiver Statute (ECI) was approved in 2019 by Law 100/2019 of 6 September 2019, and regulated by Ordinance 64/2020 of 10 March 2020. Decree-Law No. 86/2024 of 6 November 2024¹⁸⁵ introduced an amendment to Law No. 100/2019 of 6 September 2019, recognising as a non-primary informal caregiver someone who, despite not having family ties, lives in the same household as the cared-for person, providing regular but non-permanent care, whether or not they receive remuneration for their professional activity or for the care provided.

In the field of education, pupils with disabilities follow special programmes in basic and secondary-level schools that support mainstream education. In higher education, faculties have an admissions quota of 2 % of their total intake reserved for students with disabilities.

Age

Legislation on tenancy rights traditionally included specific protection for tenants aged 65 years and over and with a degree of incapacity higher than 65 % (today, this protection is being phased out, and applies only to previously agreed contracts). The option to include such positive actions – for instance, making it impossible for landlords to unilaterally terminate rental contracts – was disputed, but the Portuguese Constitutional Court, in its decision of 11 October 2000, found that the distinction established by the provision in

¹⁸⁴ Ordinance 8376-B/2015, 26 June 2015, available at: <https://dre.pt/application/file/69906402>; with the changes introduced by Ordinance 9251/2016 of 20 July 2016, available at: <https://dre.pt/application/file/74996991>.

¹⁸⁵ Available at: <https://data.dre.pt/eli/dec-lei/86/2024/11/06/p/dre/pt/html>.

question was not arbitrary. For the Court, it seemed reasonable to resolve the conflict in favour of tenants, since they need more protection from the law.¹⁸⁶

Racial or ethnic origin

Some plans in respect of non-discrimination on the basis of ethnic origin also provide for some measures that may be qualified as positive action. The 'National plan to combat racism and discrimination (PNCRD) 2021-2025 – Portugal Against Racism' includes some positive action measures, such as:¹⁸⁷

- under number 2.1: promoting the participation and representation of persons belonging to discriminated groups in the culture field under a 'blind' recruitment procedure for the Symphonic Orchestra, the National Theatre of Saint Charles and the Body of Artistic Production;
- under number 3.1: in access to higher education, the Government committed itself to ensure 1 000 vacancies for students of schools of the Educational Territories of Priority Intervention (TEIP) in 2023, 1 500 in 2024 and 2 000 in 2025;
- under number 3.8: promoting access, frequency and conclusion through the Operational Programme of Education Programme (OPRE Programme) and the ROMA Educa Programme, with 40 OPRE scholarships for higher education in 2021, rising to 60 scholarships in 2025; and 500 ROMA Educa Scholarships for secondary schools for 2021, rising to 1 200 scholarships in 2025.

b) Quotas in employment for persons with disabilities

In Portugal, national law provides quotas for the employment of persons with disabilities.

Article 28 of Law 38/2004 establishes quotas for the employment of persons with disabilities of up to 2 % for private enterprises and up to 5 % for the public sector.

The system of employment quotas for persons with disabilities in public administration (central, regional, autonomous and local public administration bodies) is regulated by Decree-Law 29/2001.¹⁸⁸ Only individuals affected with a degree of incapacity of 60 % or more – according to a national disability classification table – qualify as an employee/worker with disabilities for the purposes of assessing quota compliance¹⁸⁹. No sanctions are specified in cases in which an employer fails to comply with the quota, and there are no statistics on the number of persons with disabilities employed under the quota. As a consequence, one cannot know whether or not the practice on quotas is complied with.

Other quotas have been applicable to private employers (as well as public employers that are not covered by Decree-Law 29/2001) since the entry into force of Law 4/2019. This Law applies to medium-sized and large enterprises, and regulates a system of quotas for the employment of persons with disabilities with a degree of incapacity of 60 % or more. Medium-sized enterprises with a workforce of more than 75 employees must employ employees with disabilities as at least 1 % of their staff, while large enterprises with more

¹⁸⁶ Constitutional Court, judgment of 11 October 2000, No. 420/2000, available at: <https://dre.pt/pesquisa-avancada/-/asearch/3317294/details/maximized?emissor=Tribunal+Constitucional&perPage=100&types=JURISPRUDENCIA&search=Pesquisar>.

¹⁸⁷ The National Roma Communities Integration Strategy also establishes some positive measures such as scholarships, as already reported.

¹⁸⁸ Decree-Law 29/2001, 3 February 2001, available at: <https://dre.pt/pesquisa/-/search/315563/details/maximized>.

¹⁸⁹ In its Decision of 4 July 2024, proc. 0335/21.9BEPNF, the Supreme Administrative Court concluded that the fact that a person had suffered an oncologic disease leading to a level of incapacity of 76 % cannot be considered a 'disabling incapacity' for the purposes of filling the quota for 'persons with disabilities', because a person with an oncological disease is not in a situation of vulnerability that limits their effective equality of opportunities, which is the justification behind the adoption of positive actions. Decision available at: <https://diariodarepublica.pt/dr/detalhe/acordao/0335-2024-877634375>.

than 250 employees are required to reach a level of at least 2 %. Employers who do not meet their quota obligation are obliged to pay a fine (of up to EUR 9 690.00) given this is a serious offence, which goes to the Authority for Working Conditions (ACT) and to the National Institute for Rehabilitation (Instituto Nacional para a Reabilitação – INR). The law determined that medium-sized or large companies employing more than 100 workers had a transition period of four years to apply and comply with the legal requirements, which has ended. A comprehensive inspection by the ACT (Authority for Work Conditions) took place between 1 September 2024 and 31 March 2025, based on the individual reports delivered by employers, which may lead to pecuniary sanctions.¹⁹⁰ ACT has notified 132 enterprises about failure to comply with the legislation,¹⁹¹ but the results of these procedures are not yet known.

According to the report *Persons with Disabilities in Portugal – Human Rights Indicators 2024*,¹⁹² published by the Disability and Human Rights Observatory (ODDH) in 2022, there was a positive development in the employment rate of persons with disabilities in Portugal, which reached 65 %, reflecting an increase of 6.3 percentage points compared to 2020. For the first time, there was equality in the employment rate between women and men with disabilities (65 %). However, a significant gap (14.7 percentage points) persists between the employment rates of persons with disabilities (65 %) and those without disabilities (79.7 %), despite a gradual decrease over the years.

In the private sector, some 0.72 % (18 447) of the total human resources of private companies with 10 or more workers in mainland Portugal were persons with disabilities in 2022 (the latest year for which data are available). Consequently, an increase of 20.4 % was recorded compared to 2021, and 80.7 % compared to 2015. These data still show a contrast with the objective of extending the quota system for persons with disabilities to the private sector, introduced by Law No. 4/2019 of 10 January 2019.

In the public sector, according to the Public Employment Statistics Bulletin issued by the Directorate-General for Administration and Public Employment (DGAEP), persons with disabilities accounted for 3.2 % (n = 23 820) of Portugal's total public sector workforce (n = 745 509) in 2023. These figures reflect a 7.1 % increase since 2022 and a significant 65.8 % growth relative to 2015.

No more recent data exists as far as the authors are aware.

The Labour Code states in Article 86(4) that laws or collective agreements may introduce provisions that are more favourable to the protection of workers with disabilities or chronic diseases than to the employer, while bearing in mind the interests of both.

¹⁹⁰ See: <https://www.enescabral.com/pt/publicacoes/acao-inspetiva-da-act-sobre-o-cumprimento-das-quotas-de-emprego-para-pessoas-com-deficiencia/137/> and https://www.iefp.pt/documents/10181/9748095/Quota+de+Emprego_FAQ_11-02-2020/3a305e7f-a6df-4948-9a29-163d8952594d.

¹⁹¹ See: <https://expresso.pt/economia/trabalho/2025-03-22-act-notifica-132-empresas-por-falha-na-integracao-de-pessoas-com-deficiencia.-grandes-empresas-lideram-incumprimentos-355f2711>.

¹⁹² Disability and Human Rights Observatory (ODDH/ISCSP-ULisboa) (2025), *Persons with Disabilities in Portugal – Human Rights Indicators 2024* (eighth edition) available at: https://oddh.iscsp.ulisboa.pt/wp-content/uploads/2025/05/relatorio_oddh2024-final.pdf.

6. REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) Available procedures for enforcing the principle of equal treatment

In Portugal, the following procedures exist for enforcing the principle of equal treatment:

Control of constitutionality procedure

Every court has jurisdiction to apply the principle of equality. Furthermore, the courts may not apply norms that contravene this principle (Article 204 of the Constitution). The refusal to apply any norm on the grounds of its unconstitutionality or the application of a norm whose unconstitutionality has been raised during the proceedings may be the subject of an appeal to the Constitutional Court against court decisions (Article 280(1) of the Constitution).

Labour courts procedures (for private sector)

Specialised labour courts (*Tribunais do Trabalho*) deal with discrimination in employment in the private sector. They are part of the general judicial system but deal only with labour law cases concerning employment relationships, work-related accidents and illness, appeals against fines and disputes concerning social security rights. They deal with all questions arising from the drafting, execution and termination of employment contracts. These courts also deal with appeals regarding sanctions imposed by administrative agencies for non-compliance with employment laws.

Alternative disputes resolution in labour law (private sector)

No specific procedures for mediation in relation to discrimination are provided for in the Labour Code. However, the rules for the labour courts make it mandatory for the judge presiding over a case to hold at least one conciliation conference between the parties before trial, and require the courts to try to mediate in any labour dispute coming under their jurisdiction (Articles 32(2), 36(2), 51(1), 51(2), 55(2) and 70(1) of the Labour Procedure Code – the code containing the rules of procedure for labour issues in accordance with Decree-Law 480/99 of 9 November 1999).¹⁹³

Article 492(2)(f) of the Labour Code also states that collective agreements should include mechanisms for conciliation (Articles 523 *et seq.*), mediation (Articles 526 *et seq.*) and arbitration (Articles 529 and 506 to 511) in labour disputes.

In addition, according to Article 526(2) and (3) of the Labour Code,

‘in the absence of conventional regulation, mediation may take place: a) by agreement of all parties, at any time during the conciliation; or b) at the initiative of one of the parties, one month after the beginning of conciliation, through communication in writing to the other party.’

There is also a public system of mediation in labour law, established under the Protocol of 5 May 2006 between the Ministry of Justice and the main workers’ confederations.

Discrimination is subject to disciplinary measures and the sanctions may go as far as dismissal. However, victims have no right to intervene in the disciplinary procedure. They

¹⁹³ Available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=487&tabela=leis&so_miolo.

have the right to file a complaint with the labour courts and to give evidence or to present witnesses.

Administrative procedures and administrative courts (for the public sector)

For public employees, the law provides a system of internal (mostly hierarchical) administrative appeals that, once exhausted (if this exhaustion is established in law, which is no longer a usual legal solution), allows public employees to challenge final decisions taken by public bodies before the administrative courts (Article 4(3)(b) of Law 13/2002 of 19 February 2002 (Law on the Statute of Administrative and Tax Courts)).

Both arbitration and mediation constitute options for dispute resolution for public employees (Article 180(1)(d) and Article 87-C of Law 15/2002 of 22 February 2002, Law on Procedure in Administrative Courts). There is an institutional Centre for Administrative Arbitration (Article 187 of Law 15/2002), which has mediation and arbitration powers in this field, if the parties wish to take that route.¹⁹⁴

Criminal law procedures

If the discrimination is considered a crime under the Criminal Code, the victim may lodge a complaint with the police or the Public Prosecution Service (*Ministério Público*) or bring a civil case to a court.

Procedures for mediation in criminal law are currently implemented by the Ministry of Justice under a public system, established in Law 21/2007 of 12 June 2007.

In criminal cases, there is no time limit for mediation procedures to start if the agent and victim agree to resort to this mechanism, in accordance with Article 3(2) of Law 21/2007 of 12 June 2007. The only stipulation is that the case must be concluded within three months, in line with Article 5(1) of the Law, which establishes the criminal mediation process).

Civil law procedures

If questions of non-contractual and contractual responsibility arise from discriminatory behaviour, the competent action for damages will be directed to the judicial courts. Suspension of the instance is possible in the case of mediation, according to Article 273 of the Civil Procedure Code; this course of action is, however, not frequent in Portuguese judicial courts.

Administrative procedures (for the private sector)

The Authority for Working Conditions (ACT) is responsible for monitoring the enforcement of Labour Code provisions on equality and non-discrimination, investigating any complaints arising from infringement of these provisions and imposing administrative sanctions for such violations as set out in the Code.

It should be stressed that ACT has played a useful role in combating discrimination on the grounds of nationality and, in some cases, disability.

In the event that ACT decisions are challenged, court proceedings are initiated. In this case, information in Braille should be provided, as well as sign language interpreting if necessary.

¹⁹⁴ See Centre for Administrative Arbitration (Centro de Arbitragem Administrativa) website, <https://www.caad.org.pt/administrativo>.

In specific areas where independent administrative authorities have been established, they have the competence to regulate the market and therefore also to prevent and to pursue instances of discrimination or discriminatory practices. This is the case with the Health Regulation Authority (ERS – Entidade Reguladora da Saúde) according to Decree-Law 126/2014 of 22 August 2014, Article 12(b).

Mediation in areas outside employment

In the areas covered by Law 93/2017, Article 11 governs the possibility of mediation, at the request of the parties or initiated by CEARD, with the consent of the offender and the victim (Article 11 of Law 93/2017). However, mediation is never mandatory in Portugal (according to Article 4 of Law 29/2013 of 19 April 2013)¹⁹⁵ and CEARD may only refer the parties to mediation.

According to these rules, the mediator will be an independent and impartial third person whose main function is the facilitation of communication, chosen by agreement between the parties and qualified by a mediation course in the criminal area taught by an entity certified by the Ministry of Justice, and the mediation procedure must be fast and involve the minimum number of sessions possible.

One novelty introduced by Law 3/2024, which established the new CEARD, is that this independent entity can have its own mediation services, access to which shall be voluntary (Article 12), as explained in Section 7.8.b below.

In Portugal, mediation covers all aspects of social life and law, so it is also open to all discrimination grounds (naturally as long as the request does not entail concluding an agreement that affects 'non-transactionable' personal interests) (Article 11 of Law 29/2013 of 19 April 2013).

In addition, since mediation is explicitly provided for in Law 93/2017 of 23 August 2017, it is naturally applicable to all the grounds it covers: racial and ethnic origin, colour, nationality, ancestry and territory of origin. In addition, Article 13 of Law 38/2018, also explicitly allows for the use of alternative dispute resolution mechanisms but does not regulate them.

However, there is no data on mediation on discrimination issues, for two reasons: 1) the confidentiality of the procedure itself; and 2) the fact that CEARD does not provide any information on the number of discrimination claims that it has referred to mediation.

On a related note, there is, however, some scattered qualitative and quantitative information on intercultural mediation (mostly with Roma communities and in an educational context).

In addition, in the biggest Portuguese towns, there are Courts of the Peace (*Julgados de Paz*), which can also work in mediation.

Within the Court of the Peace, voluntary mediation is one of the steps in the procedure. Once a case is started, a pre-mediation session takes place, conducted by a specialised mediator. This session aims to explain the mediation process to the parties and check the parties' availability for resolving their dispute by mediation (Articles 49 and 50 of Law 78/2001 of 13 July). In this session, parties will decide if they want to try to solve their cause by mediation or if they will assign the dispute to the Judge of the Peace. In the event of parties quitting the mediation procedure (or not accepting the use of mediation), the dispute will be decided by the Judge of the Peace (Article 56 of Law 78/2001). This

¹⁹⁵ Law that establishes the general principles applicable to mediation in Portugal, as well as the legal regimes for civil and commercial mediation, mediators and public mediation, available at: <https://dre.pt/dre/detalhe/lei/29-2013-260394>.

decision has the same validity as the decisions of every other national court (Article 61 of Law 78/2001 of 13 July).

Mediation can therefore be used as a means to overcome the barriers presented by judicial and administrative procedures.

Nonetheless, the use of these mechanisms is still very scarce in Portugal, since they are not widely known and trusted.

Ombudsperson

According to Article 23(1) of the Constitution, citizens may submit complaints against actions or omissions by the public authorities to the Ombudsperson (*Provedor de Justiça*), who will assess them without the power to take decisions and will send the competent entities and bodies the recommendations needed to prevent or make good any injustices. The Ombudsperson's work is independent of any non-judicial or judicial remedies provided for in the Constitution or the law. The entities, bodies and agents of the public administration must cooperate with the Ombudsperson in the fulfilment of its mission.

The Ombudsperson has paid special attention to discrimination cases, but has no decision-making powers in the event of a dispute nor any powers to impose fines. However, its institutional role, its power to issue recommendations and its particular link to the Portuguese Parliament make it a valuable tool in promoting equality.

Action by the Commission for Equality and Against Racial Discrimination (CEARD)¹⁹⁶

For offences committed under Law 93/2017, the President of CEARD has the authority to initiate an administrative procedure. The decision, including the application of penalties and the level of the fine, is also the responsibility of CEARD (Article 4(1)(k) of Law 3/2024).

The respondent has the right to request judicial review of the administrative decision, as does the victim. Associations and NGOs whose aim is to prevent and combat discrimination have the right to request a judicial review or to intervene in judicial review proceedings if requested to do so by the victim.

b) Barriers and other deterrents faced by litigants seeking redress

For judicial procedures mentioned above, the victims must instruct a lawyer and advance some funds. They are, however, entitled to legal assistance (*apoio judiciário*) if they do not have sufficient financial means to cover a lawyer's fees and litigation costs. This also applies to foreign nationals. However, the length and complexity of the procedure may act as a deterrent to those seeking redress.

As far as administrative procedure is concerned, the victim has the right to ask for information on the case and if necessary to complain to the Ombudsperson.

In labour law, cases can be brought within a period of up to one year after the employment relationship has ended (Article 337(1) of the Labour Code).

In procedures to impose fines, the case must have been initiated, according to Decree-Law 433/82 on General Rules on Minor Offences (Article 27), within a period of one, three or five years from the date that the offence occurred, depending on the seriousness of the offence.

¹⁹⁶ We shall refer, from now on, to the CEARD under its new configuration. Please note that the new CEARD is not yet fully functional according to its new legislative mandate, as will be explained in Section 7.1.

As mentioned above, employees may benefit without cost from the support of the Public Prosecutor and Authority for Working Conditions (ACT), and they may also benefit from legal aid.

The most common factor acting as a deterrent is the length of the procedure and the difficulty of obtaining evidence.

c) Number of discrimination cases brought to justice

In Portugal, statistics on the number of court cases related to discrimination brought to justice are not available.

However, under Article 8 of Law 93/2017, and now under Article 4(4) of Law 3/2024, it is CEARD's duty to prepare and publicise an annual report on the situation of equality and discrimination on the grounds of racial or ethnic origin in Portugal. The report gathers statistical and administrative data related to racial and ethnic discrimination, including administrative procedures. The latest available report of (in this case the 'old') CEARD on Equality and Non-Discrimination regarding racial and ethnic origin, colour, nationality, ancestry and territory of origin from 2022¹⁹⁷ included some indirect data and only on criminal issues. It stated that

'in 2021, there were a total of 301 394 offences recorded by the police authorities, of which 150 were crimes of discrimination and incitement to hatred and violence. Analysing the provisional results for 2022, there was an increase in the total number of crimes recorded by the police authorities, to 343 845, as well as the number of crimes of discrimination and incitement to hatred and violence, which rose to 270'.

In addition, it states that

'in 2021, 5 criminal cases were finalised in the 1st instance courts, for the crime of discrimination and incitement to hatred and violence, involving 5 defendants, resulting in 3 people convicted of the offence of discrimination and incitement to hatred and violence'.

No recent report exists, given the inactivity of CEARD since the end of 2023.

d) Registration of national court decisions on discrimination cases

In Portugal, discrimination cases are not registered as such by national courts. Nonetheless, Article 15(4) of Law 93/2017 established that civil liability condemnatory decisions should, after they become *res judicata*, be published on the website of the HCM for a period of five years, including, as a minimum, the identification of the legal persons convicted, information about the type and nature of the discriminatory practice and the compensation fixed. Although HCM was superseded by AIMA, there is no similar obligation established for AIMA.

However, Article 14(2) of Law 3/2024 establishes that 'All decisions on discriminatory practices on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin issued by the courts and competent public bodies are communicated to the CEARD within 10 days.' The implementation of this obligation is still to be seen, since CEARD has barely initiated its functions, and the form of this communication and reporting is yet to be defined.

¹⁹⁷ Available at:
https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=126693&ACT_TP=PRC.

In addition, Decree-Law 46/2006 establishes that civil liability condemnatory decisions, after becoming final and binding, will be mandatorily published at the expense of those responsible in one of the daily periodicals with the greatest circulation in the country, by means of an extract from which only the facts evidencing the discriminatory practice on the grounds of disability, the identity of the offended and of those convicted, and the compensation fixed, will be stated. The inclusion of the identity of the offenders will depend on their consent (Article 7(3)(4)).

Judicial cases are rare, and there have so far been no instances of such cases being registered or publicised. Furthermore, first instance decisions have not usually been published, and it is an arduous task even to find out if they indeed exist. Therefore, only a scattering of decisions from superior courts can be found in the dgsi.pt general database.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Portugal, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

Associations

According to Article 12(1) of Law 93/2017, associations with the objective of combating discrimination based on the grounds of racial or ethnic origin, nationality, ancestry and territory of origin have the right to engage in judicial procedures on behalf of the interested persons, with their approval.

Under national law, associations have to be incorporated, with specific aims listed in their by-laws. They must aim to protect people against discrimination or protect fundamental rights in general. There are no membership or permanency requirements. 'Legitimate interest' is proven by the aims of the associations as contained in their by-laws.

NGOs registered abroad can also act on behalf or in support of victims.

The victim's authorisation must be given in writing. In the case of minors or persons under guardianship, the authorisation of their parents or guardian is required.

Action by all associations is discretionary. They decide in which cases to intervene.

In addition, Article 15(1) of Law 46/2006 stipulates that associations for persons with disabilities and other similar organisations defending the rights and interests of persons with disabilities have the right to intervene in support or on behalf of a complainant in his or her respective legal proceedings. Such organisations have the right to monitor administrative procedures that may culminate in a fine for any discriminatory act referred to in Law 46/2006. Where a crime has been committed against a person with disabilities, these organisations have the right to assist in subsequent criminal proceedings. The application of this law is monitored by the INR.

Decree-Law 163/2006 (Article 14), on accessibility for persons with disabilities, provides that legal entities (NGOs and associations) representing persons with disabilities have legal standing in court to assist or act on behalf of individuals with disabilities in court cases in which they are involved.

In cases of minor offences, these organisations have the right to denounce the discriminator and file a complaint with CEARD. Individual complainants need be identified only if this is necessary to substantiate the complaint.

Trade unions

Trade unions are entitled under national law (Article 5 of the Labour Procedure Code, and Articles 5 and 8 of Law 3/2011) to act on behalf of victims of discrimination.

It is also possible for trade unions to engage in some cases on behalf of victims of discrimination in judicial or administrative procedures under the Labour Code and the Labour Procedure Code.

Article 5(2)(c) of the Labour Procedure Code states that trade unions may file actions to represent members who authorise them to do so in cases related to a general violation of individual rights of an identical nature. Article 5(3) states that authorisation is presumed if the member does not demonstrate any opposition after being informed by the trade union of its intention to file the action.

Within companies, trade unions represent only their members, but in practice they are often accepted as competent to represent any worker.

Members of trade unions are entitled to free access to legal representation. The Public Prosecution Service represents all workers in cases before the labour courts.

Article 9(2) of the Employment Equality Directive is covered by Article 477(d) of the Labour Code, but only trade unions have the right to intervene in defence and protection of their members.

Furthermore, Article 443(1)(d) of the Labour Code grants legal standing to trade unions in administrative proceedings, imposing fines in cases of violation of the anti-discrimination rules of the Code, with the right to file an appeal or to answer an appeal by the person found guilty. Article 5 of the Labour Procedure Code allows the intervention of trade unions in employment cases. Although membership is a necessary condition for trade union standing, this is not monitored, which means that a trade union may also intervene in cases in which the worker is not a member of the union.

NGOs

NGOs working in the anti-discrimination field focus on the area or areas of discrimination in which they have expertise at national, regional or local level – for example, race, religion, sexual orientation or age – and are entitled to act on behalf of the victims of discrimination (Article 7 of Law 3/2011). Some NGOs that deal with immigrants or specific groups focus on their own communities. There is a wide range of NGOs in Portugal, with some of them being active in ethnic issues in particular or in working with certain communities (such as the Roma community).

According to Article 12 of Law 93/2017, NGOs with the objective of combating discrimination based on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin have the right to engage in judicial procedures on behalf of the interested persons, with their approval.

Article 8 of Law 3/2011 states the following:

‘Legal standing: organisations whose purpose is the defence or promotion of the rights and interests of individuals against discrimination regarding access to employment, training or to the conditions for the provision of self-employment or employment, have legal standing to intervene on behalf of the person concerned, provided that:

- the associations explicitly include protection of the specific interests in their assignments or by-law objectives; and
- there is express authorisation from the person represented.'

According to Article 68(1)(2) of the Criminal Procedure Code, any person may bring proceedings in the case of crimes of discrimination, as set out in Article 240 of the Criminal Code. This provision covers both associations and natural persons.

There are no special rules on shifting the burden of proof.

- b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Portugal, associations, organisations and trade unions are also entitled to act in support of victims of discrimination.

Associations are entitled to act in support of victims of discrimination under Article 12(1) of Law 93/2017.

Trade unions are entitled to act in support of victims of discrimination (Article 5 of the Labour Procedure Code, Decree-Law 480/99 and Articles 5 and 8 of Law 3/2011).

Article 23 of Law 107/2009, which approves the procedural rules for administrative offences in relation to labour and social security, also grants trade unions legal standing to intervene in administrative proceedings in support of the worker.

The NGOPDs (Non-Governmental Organisations for Persons with Disability) and all organisations defending and promoting the interests of persons with disabilities have legitimacy to intervene in support of the interested party (Article 15(1) of Law 46/2006).

More specifically, NGOs that deal with persons with disabilities (NGOPDs) are entitled to act in support of victims of discrimination in criminal procedures, according to Article 5(2) of Decree-Law 106/2013, which defines the statute for NGOPDs.

- c) Submitting observations, e.g. *amicus curiae* briefs/letters

In Portugal, associations, organisations and trade unions are not entitled to submit observations to courts or other adjudicating bodies, such as *amicus curiae* briefs, in discrimination cases.

The fact that legislation does not provide opportunities to use *amicus curiae* is problematic, as this would allow organisations to participate in court proceedings without incurring the costs associated with a more formal intervention in the process.

The introduction of a legal regulation for *amicus curiae* was debated (under the proposal that: '1 - The court, considering the social repercussions of the dispute and the representativeness of the intervening party, if it is a legal person, may request ex officio, or admit, at any time, at the request of the parties, by means of an unappealable order, the intervention of a natural or legal person, within ten days of its summons'), but such a measure was not included in the final version of the revised Civil Procedure Code of 2013.¹⁹⁸

¹⁹⁸ See Quintas, R., 'Amicus curiae no direito processual civil português: o enigma da esfinge de Tebas?', *RJLB*, Ano 4 (2018), No. 2, available at: https://www.researchgate.net/profile/Ricardo-Quintas-4/publication/334638953_AMICUS_CURIAE_NO_DIREITO_PROCESSUAL_CIVIL_PORTUGUES_O_ENIGMA_D_A_ESFINGE_DE_TEBAS/links/5d379c6c299bf1995b452ed7/AMICUS-CURIAE-NO-DIREITO-PROCESSUAL-CIVIL-PORTUGUES-O-ENIGMA-DA-ESFINGE-DE-TEBAS.pdf.

d) *Actio popularis*

In Portugal, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

According to Article 52(3) of the Constitution and Law 83/95,¹⁹⁹ *actio popularis* in both administrative and judicial procedures is admissible in Portugal in respect of diffuse interests. The term 'diffuse interests' refers to interests that affect an indeterminate group of people which cannot be individualised. Examples include the right to a balanced environment, quality of life and consumer safety.

The wording of those Articles seems to be narrow (Article 1(2) of Law 83/95 refers to public health, environment, quality of life, consumer protection, cultural heritage and public property, merely as exemplification). However, the remit has been amplified by legal doctrine to cover other grounds, such as non-discrimination, that require collective action.

The same can be said regarding Article 31 of the Civil Procedure Code (Decree-law 480/99 of 9 November 1999). Furthermore, Article 55(1)(f), in connection with Article 9(2) of the Code of Procedure in Administrative Courts (Law 15/2002 of 22 February 2002),²⁰⁰ grants legal persons, including NGOs whose aim is to protect a certain general interest, the option of intervening in administrative procedures and subsequently the right to appeal to the administrative courts if they consider it necessary.

Under Article 12(1) of Law 93/2017, associations may act in support of rights and collective interests. This Article stipulates:

'Associations and non-governmental organisations whose statutory object is essentially aimed at preventing and combating discrimination on the grounds referred to in Article 1 shall be legitimately entitled to propose and intervene, either in representation or in support of the person concerned and with his or her consent, or in defence of collective rights and interests.'

Actio popularis in civil cases is permitted for NGOs only if their by-laws state the protection of the concerned interest as an objective.

The prosecution of hate crimes by NGOs is considered an *actio popularis* if no specific victim exists.

In labour law, under Article 5(1) of the Labour Procedure Code, trade unions can intervene to protect individual rights in general without there being an identified victim. They may use all types of proceedings available in the Code and the types of remedies specified by the Labour Procedure Code.

In housing, Law 83/2019 introduced the possibility of using *actio popularis* (Article 60(2)(a)).

There is no long-standing tradition of using *actio popularis* in Portugal. However, a decision of the Administrative and Fiscal Court of Leiria of 7 November 2024 (proc.190/19.9BELRA) was made under an *actio popularis* brought by an association for person with disabilities against the Portuguese state for non-compliance with the rules on accessibility for persons with disabilities in public buildings (courts).²⁰¹

¹⁹⁹ Law 83/95 (Law on Procedural Participation and Popular Action), 31 August 1995, available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=722&tabela=leis.

²⁰⁰ Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=439&tabela=leis.

²⁰¹ For a summary of this case, see: Lopes, D. and Vicente, J. (2025), *Country report: Non-discrimination – Portugal*, Brussels, European Commission Directorate-General for Justice and Consumers,

There are no rules with regard to shifting the burden of proof.

e) Class action

In Portugal, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

The laws distinguish between *actio popularis*, where no specific victim exists, and class actions, where there are a number of complainants, and establishes different conditions for each of them.

Class actions are possible in civil, administrative and labour procedures.

In labour law, under Article 5(2) of the Labour Procedure Code only trade unions can intervene to protect individual rights in class actions. They may bring class actions under Article 5(2) of the Procedure Code, which states:

‘Legitimacy of trade unions and employers’ associations

1. Trade unions and employers’ associations have standing as claimants in proceedings concerning rights relating to collective interests they represent.
2. Trade unions can also exercise the right of class action on behalf of workers and replacement as authorised:
 - a. In proceedings relating to measures taken by the employer against employees who belong to the governing bodies of the trade union or any office in this exercise;
 - b. In proceedings relating to measures taken by the employer against its members who were elected as workers’ representatives;
 - c. In class actions for the violation as a matter of generality, individual rights of a similar nature of their associated workers.’

Trade unions may use all types of proceedings available and the types of remedies provided by the Labour Procedure Code.

There are no specific rules concerning the shifting of the burden of proof for class actions.

Trade unions and NGOs also have the right to act on behalf of one or more complainants. Class actions, in the sense of collective actions (actions with several complainants, functioning on the opt-in model), are possible in civil and administrative law.

- Law 83/95 of 31 August 1995 (People’s Civil Action – *Acção Popular Civil*) covers some kinds of class action;
- Articles 55(1)(f) and 9(2) of the Code of Procedure in Administrative Courts grants NGOs some rights to legal standing that can be used in some administrative procedures.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Portugal, national law requires a shift in the burden of proof from the complainant to the respondent.

According to Article 25(5) of the Labour Code, it is for the person who considers himself or herself to be discriminated against to substantiate the occurrence of the alleged

<https://www.migpolgroup.com/wp-content/uploads/2025/08/country-report-non-discrimination-DS0125059ENN.pdf> (pp. 122-123).

discrimination, by naming the actual worker (or hypothetical ones) he or she feels are, have been or would be treated more favourably. It is for the employer to prove that differences in treatment are not due to any of the prohibited grounds of discrimination. This therefore leads to an inversion of the burden of proof, since the employer has a duty to prove that the differences are not based on any of the factors referred to in Article 24(1).

This provision applies to all the grounds of discrimination mentioned in Article 24(1) of the Labour Code – in particular race, ethnic origin, religion or belief, disability, age and sexual orientation.

This shift in the burden of proof also applies in cases of harassment. However, since the Labour Code distinguishes between discriminatory and non-discriminatory harassment, the labour courts only apply this rule to cases of harassment based on a discriminatory factor.²⁰²

Furthermore, the relevant provision (Article 25(5) of the Labour Code) extends that to cases of instruction to discriminate, which is classified by the Labour Code as a discriminatory act.

A presumption of discrimination is made once the employee can demonstrate the existence of a discriminatory factor and of facts that allow for such a presumption to be established. It is then up to the employer to prove that his or her actions are not to be considered discriminatory.

The law has a restrictive requirement in that the rule on the shifting of the burden of proof may benefit the worker only when, besides invoking an unfavourable difference of treatment, they also invoke and show elements related to the grounds of discrimination that they consider to be the origin of the different treatment.

The worker must indicate in their claim which ground is related to the difference of treatment that they have suffered and must argue: a) a ground of discrimination, giving *prima facie* elements and b) a difference of treatment based on this ground. An example might be the argument: a) because they are of Roma origin, b) they have a lower wage than other colleagues.

If the complainant does not invoke a specific ground (according to Article 23 of the Labour Code) as the cause of the discrimination, the burden of proof is not shifted.

If no facts that can be integrated into one of these types of discriminatory acts, the rule regarding the shifting of the burden of proof will not be applicable.

Indeed, the question of the *onus probandi* is almost uniformly addressed in the Portuguese case law. As indicated in the decision of the Supreme Court of Justice of 12 October 2011 (proc. 343/04.4TTBCL.P1.S1):²⁰³

²⁰² See the Decision of the Guimaraes Court of Appeal of 15 June 2021, proc. 5345/17.8T8GMR.G1 – available at:

<https://www.dgsi.pt/jtrq.nsf/86c25a698e4e7cb7802579ec004d3832/466fc011d4ba4ed0802586fc004c91f3?OpenDocument> and the Decision of the Supreme Court of Justice of 11 September 2019, proc.

8249/16.8T8PRT.P1.S1 –

<https://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/11a78d9841716d4180258473003b8fe7?OpenDocument>.

Some Portuguese legal scholars argue that Article 25(5) of the Labour Code should apply in any case of harassment (discriminatory and not discriminatory) since the directives on non-discrimination apply the shift in the burden of proof to all types of harassment; see Rouxinol, M. (2024), *Direito Antidiscriminação nas Relações Laborais*, Almedina, Coimbra, p. 45; Redinha, R. (2011), 'Assédio – uma Noção Binária?', *Direito do Trabalho + Crise = Crise do Direito do Trabalho*, Coimbra Editora, Coimbra, p. 271.

²⁰³ Available at:

<https://www.direitoemdia.pt/search/show/7d35bde971c449bf1a019c75d7444f22e6e19f8bd4bffa304cd1dede48ee2ef29>.

‘this Supreme Court when called upon to settle disputes in which none of the characteristic factors of discrimination (e.g. sex, age, race, etc.), has uniformly held that in order to conclude that there is pay discrimination between workers that is an offence to the constitutional principles of equality/equal pay for equal work, it is necessary to prove that the various workers who are paid differently perform work that is the same in terms of nature (difficulty, arduousness and danger), quality (responsibility, exigency, technique, knowledge, ability, practice, experience, etc.) and quantity (duration and intensity)’.

In addition, it is indicated that:

‘only if one of these (discriminatory) factors is alleged and demonstrated does the Law presume that the differentiated treatment resulted from it, in which case the burden of proof to the contrary falls on the employer, i.e. proof that the difference in treatment was not due to the factor indicated, but to legitimate reasons, among which are those related to the nature, quality and quantity of the work performed by the employees’.

In this case, no discriminatory factor was alleged.

National law also requires a shift of the burden of proof from the complainant to the respondent in Law 93/2017 (Article 14). Under Article 14(1), whenever a practice or act is found to be discriminatory within the meaning of Article 3, it shall be presumed that there has been discriminatory intent, without the need to prove the criteria that motivated it. The presumption may be rebutted, under the general terms of the law, before the court or other competent entity (Article 14(2)). That means that the victim of discrimination must present facts from which the occurrence of such discrimination may be inferred. It is up to the respondent to prove that the differences in treatment are not the result of any of the factors mentioned in the Law. The victim must demonstrate the act of discrimination and present facts to substantiate it. The defendant must show in turn that the differential treatment had no basis in racial and ethnic origin, colour, nationality, ancestry or territory of origin. In the case of an act of retaliation, it is only necessary to prove the existence of a claim, complaint, denunciation or action against the author of the act which may have given rise to the retaliation, and to provide evidence of the act whose retaliatory nature is disputed, it being presumed that it was due to that act.

Article 6(1) of Law 46/2006, which prohibits and punishes discrimination based on disability and on a pre-existing risk to health, provides that the victim of discrimination must present facts from which the occurrence of discrimination on the grounds of disability may be inferred. It is up to the respondent to gather means of proof that the differences of treatment are not based on any factors mentioned in Articles 4 and 5 (discrimination on the grounds of disability in work and in access to employment, in the access to and supply of goods and services, housing, education, sign language and transport).

Article 7 of Law 3/2011, which forbids any discrimination in access to and the exercise of self-employment, provides that the victim of discrimination must present facts from which the occurrence of discrimination may be inferred. It is up to the respondent to gather means of proof that the differences of treatment are not based on the grounds of racial or ethnic origin, religion or belief, disability, age, sexual orientation or sex.

By contrast, this principle does not apply to criminal procedures or to actions where, according to the law, it is up to the court or other jurisdiction to carry out the investigation²⁰⁴.

²⁰⁴ See Article 14(4) of Law 93/2017.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Portugal, there are legal measures for protection against victimisation.

Article 331(1)(a) to (d) of the Labour Code states that any disciplinary measure taken against a worker is to be considered abusive (and therefore illegal) if it is in retaliation for a complaint against working conditions or for the (present) exercise, the past exercise or the intention to exercise or invoke rights and guarantees on the part of the employee or if it is in retaliation for a complaint/testimony of harassment.

Based on these provisions (and also on the provisions set out in Articles 351(1)(3) and 381(b) of the Labour Code), any kind of victimisation is considered illegal under labour law.

Victimisation is clearly prohibited outside of employment for the grounds of racial or ethnic origin. This is covered by Article 13 of Law 93/2017, which states that acts of retaliation are null and void. It does not expressly mention witnesses, but they must be considered to be protected.

There is no specific mention of protection for witnesses or for people who help a victim of retaliation, but if retaliation is proven, the above rules should be applicable, taking the comprehensive wording of the laws into account.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

Administrative offences (*contraordenações*)

Under Article 548 of the Labour Code, any violation of its provisions amounts to an administrative offence (*contra-ordenação*), for which an administrative fine (*coima*) can be imposed. Although these are administrative and not criminal sanctions, any dispute of their validity goes to civil rather than administrative courts.

The Labour Code classifies these administrative offences according to their degree of gravity as minor (*leves*), serious (*graves*) or very serious (*muito graves*) offences. A violation of the provisions on equality and non-discrimination is classified as a very serious offence (Article 25(9) of the Labour Code). Other offences related to the application of the Employment Equality Directive may be classified as minor or serious offences. These sanctions apply to all grounds of discrimination.

Article 554 of the Labour Code establishes the maximum and minimum value of the fines, including for offences based on discrimination, which depends on the company's business volume, the offender's degree of guilt and the degree of seriousness of the infraction.

Article 24(1) of the Labour Code refers only to employers, but it is fair to assume that under Article 548 of the Code, everyone (not only employers) is liable to administrative sanctions if they violate the Code's provisions on equality and non-discrimination, as Article 548 refers to 'any person'.

The Labour Code specifically states that legal persons are liable to administrative sanctions. Employers are also responsible for the payment of administrative sanctions imposed on their subcontractors if they cannot show that they acted with proper care (Article 551(4)). A decision imposing an administrative fine for a violation of the provisions of the Labour Code on equality and non-discrimination can also be published (Article 562(3) and (4)).

Any discriminatory provisions included in an employment contract are, under Article 294 of the Civil Code and Article 121(1) of the Labour Code, considered null and void and can be declared so by the labour courts.

In the field of self-employment, discrimination on the grounds of racial or ethnic origin, disability, sexual orientation, religion or belief or sex leads to an administrative offence. Article 9 of Law 3/2011 establishes that the violation of the provisions of Article 3(1), Article 4(1) or Article 5(1) constitutes an administrative offence punishable by a fine of between 1 and 5 times or between 2 and 10 times the value of the guaranteed minimum monthly wage, depending on whether the perpetrator is a natural person or a legal person. In the event of a repeat offence, the minimum and maximum limits of the fine shall be doubled. Whenever the administrative offence results from the omission of a duty, the imposition of the sanction and the payment of the fine shall not exempt the offender from complying with it, if this is still possible. According to Article 10 of Law 3/2011 the perpetrator may be liable to ancillary penalties in addition to a fine, which may include the temporary withdrawal of public authorisation to carry out activities in an enterprise, a ban on competing for public contracts and/or the publication of the decision.

With regard to sanctions for the violation of disability anti-discrimination provisions, Article 9 of Law 46/2006 establishes that the practice of any discriminatory act by a natural person constitutes an administrative offence punishable by a fine of between 5 and 10 times the value of the guaranteed minimum monthly salary, without prejudice to the provisions of Paragraph 5 and the possible civil liability or the application of any other sanction that may apply in the case. By contrast, the practice of any discriminatory act by a legal person governed by private or public law constitutes an administrative offence punishable by a fine of between 20 and 30 times the value of the guaranteed minimum monthly salary. At the request of the perpetrator, the body responsible for imposing fines or the court may order that the fine be totally or partially replaced by days of work in establishments, works of the state or other legal persons governed by public law or private social solidarity institutions whose main purpose is to provide services to people with disabilities and their families, when they conclude that this form of compliance is appropriate to the seriousness of the offence and the circumstances of the case. Recidivism is taken into account for the purposes of setting the actual amount of the fine. According to Article 10 of Law 46/2006 the perpetrator may be liable to ancillary penalties in addition to a fine, which may include the temporary withdrawal of public authorisation to carry out activities in an enterprise, a ban on competing for public contracts and/or the publication of the decision.

Racial discrimination in general leads to a summary administrative offence (*contra-ordenação*). Law 93/2017 states that discrimination is a summary offence punishable by a fine, without prejudice to civil liability or the application of other established sanctions.

Criminal sanctions

The Criminal Code covers discrimination based on almost every ground.

On 15 January 2024, Law No. 4/2024 of 15 January 2024²⁰⁵ was published in the *Official Journal of Portugal*, establishing multiple amendments to the Portuguese Criminal Code, some of them concerning Article 240, which typifies the crime of discrimination and incitement to hatred, and violence. The amended text of Paragraphs 1 and 2 of Article 240 of the Portuguese Criminal Code, as brought about by Law No. 4/2024, leads to an extension of the discriminatory grounds relevant for the commission of the crime of discrimination and incitement to hatred and violence, and to an expansion of the behaviours falling under the scope of that crime. This provision covers the grounds of colour, racial, ethnic or national origin, ancestry, religion, language, gender, sexual orientation, gender identity or expression, sex characteristics and physical or mental

²⁰⁵ Available at: <https://diariodarepublica.pt/dr/detalhe/lei/4-2024-836604893?ts=1706124599198>.

disability. Law No. 4/2024 has also eliminated the previous requirement of the existence of 'organised' propaganda activities.

As for sanctions, if the criminal behaviour involves creating, participating in or assisting discriminatory organisations or developing discriminatory propaganda, the offence will be punishable with a prison sentence from one to eight years (No. 1). Other typified behaviours are punishable with a prison sentence from six months to five years (No. 2).

Additionally, Law No. 4/2024 has introduced a new Paragraph 3 into Article 240 of the Portuguese Criminal Code. This paragraph specifies that if the offences inscribed in the preceding paragraphs of that article are committed through an informatic system, the court may issue an order for the deletion of the relevant data or content, which was not possible, until now, in criminal procedures.

Law 15/2024 of 29 January 2024 introduced an amendment to the Criminal Code by including a new type of criminal offence: acts contrary to sexual orientation, gender identity or expression (Article 176-C of the Criminal Code). In accordance with the new provision, individuals who subject another person to acts aimed at altering or repressing sexual orientation, gender identity or expression, including by carrying out or promoting medical-surgical procedures, practices with pharmacological, psychotherapeutic or other psychological or behavioural resources, may face imprisonment of up to three years or a fine. The amendment also provides for prison sentences of up to five years for anyone who develops treatments or carries out surgical, pharmacological or other interventions that involve irreversible changes to a person's body and sexual characteristics. In addition, the new legislation made a highly surgical amendment to Law 38/2018 of 7 August 2018, by reinforcing the fact that any practices aimed at the forced conversion of sexual orientation or gender identity or expression are prohibited (Article 3(3) of Law 38/2018).

Under Article 132(2)(f) of the Criminal Code on homicide, motives based on hatred on the grounds of race, religious or political convictions, colour, ethnic origin or nationality, religion, gender, sexual orientation or gender identity are regarded as aggravating circumstances, resulting in a more severe penalty. Such aggravating circumstances may also apply in cases of assault causing bodily harm under Article 145(2) of the Criminal Code. There is no general rule stipulating that such motives constitute aggravating circumstances for all offences. This means that, for other offences, it is for the courts to decide, on a case-by-case basis, whether racist motives constitute a circumstance that should be taken into account when sentencing the offender.

Articles 251 and 252 state that outrage (affronts and insults) and trouble and disorder affecting the normal provision of religious services are crimes punishable with imprisonment of up to one year, or with a daily fine up to 120 days. 'Daily fines' are fines of between EUR 5 and EUR 500, calculated on the basis of the income of the guilty party, as laid down in Article 47(2) of the Criminal Code. If they are not paid, these fines can be converted into prison sentences.

Article 253 criminalises violence or threats against funeral processions or ceremonies (*cortejo ou cerimónia fúnebre*), punishable with imprisonment of up to one year or a daily fine up to 120 days. This Article protects the religious ceremonies involved. Article 254 criminalises the desecration of any cemetery, which is punishable by up to two years' imprisonment or a daily fine of up to 240 days.

Genocide is covered by Article 8 of Law 31/2004 of 22 July.²⁰⁶

According to Article 58 of the Criminal Code, if the offender is sentenced to imprisonment for a term not exceeding two years, the court shall replace this sentence with community

²⁰⁶ Available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=123&tabela=leis.

service whenever it concludes, taking particular account of the offender's age, such that this will adequately and sufficiently fulfil the purposes of the punishment. Furthermore, disqualification to exercise a profession, function or activity (for a period from 2 to 8 years) exists as a substitutive sanction for crimes punishable by imprisonment of less than three years (Article 46)

A mere warning may be issued for some lesser administrative and criminal infractions, but this option has a very limited scope of application and seems not to suit discrimination cases, given their seriousness.

Civil sanctions

Civil damages can be awarded for all types of discrimination under the general principles of Articles 483, 484 and 496 of the Civil Code.

In labour law, it should be noted that Article 28 of the Labour Code expressly states that the occurrence of any discriminatory act gives the worker or job applicant concerned the right to be compensated for pecuniary or non-pecuniary damages in accordance with the general provisions of civil law (i.e. Articles 483, 496, 799 and 800(1) of the Civil Code). Under Article 500 of the Civil Code (joint and several liability), in some cases the employer (if the perpetrator is not the employer) may also be sued for damages, together with the person who is held to be legally responsible for the discrimination.

If the dismissal is declared unlawful, the employer shall be ordered to compensate the employee for all damages caused, whether pecuniary or non-pecuniary (under Article 389(1)(a) of the Labour Code). The employee is also entitled to choose one of two remedies: his/her reinstatement into the company or payment of compensation for dismissal to be set by the court (Articles 389(1)(b) and 391(1) of the Code). The indemnity may be set between 15 and 45 days' base salary plus the seniority premiums for each year (or fraction of a year) of seniority, with a minimum of three months' remuneration.

If the dismissed employee's role involved management responsibilities or if the company has fewer than 10 employees, the employer may oppose their reinstatement in the job role on the grounds that this would seriously affect the employer organisation. If the court decides in favour of the employer, ruling against reintegration, the indemnity to be granted to the employee will be set between 30 and 60 days' base salary plus the seniority premiums for each year (or fraction of a year) of seniority, with a minimum of six months' remuneration. However, if the dismissal is ruled unlawful based on discriminatory grounds (political, ideological, ethnic or religious), the employer cannot oppose the reintegration of the employee (Article 392 of the Labour Code).

According to Law 3/2011, which forbids any discrimination in access to and exercise of self-employment, any person applying for self-employment or who is self-employed who is harmed by discriminatory acts is entitled to compensation for pecuniary and non-pecuniary damage under the general terms of the Law (Article 6(1)). Furthermore, any act that affects a self-employed person as a result of rejection or submission to discriminatory conduct shall be deemed null and void (Article 6(2)).

Regarding discrimination on the grounds of racial or ethnic origin, Article 15 of Law 93/2017 establishes that the discriminatory practice, by action or omission, will confer on the aggrieved party the right to compensation for material and non-material damage, as a matter of extra-contractual civil liability. It adds that when establishing the compensation for non-material damage, the court will take into account the degree of violation of the interests in question, the economic power of the person causing the damage and the conditions of the injured party. In contracts that contain discriminatory clauses, these will be considered null and void and the aggrieved party will have the right to alter the contract, without prejudice to compensation for extra-contractual civil responsibility.

Concerning disability, Article 7 of Law 46/2006 establishes that the discriminatory act against a person with disability will confer on the aggrieved party the right to compensation for pecuniary and non-pecuniary damage, under the general terms. When setting compensation, the court must take into account the degree of violation of the interests in question, the economic power of the perpetrators and the conditions of the person targeted by the discriminatory practice. Sentences handed down in civil liability cases shall, once they have become final, be compulsorily published, at the expense of those responsible, in one of the country's most widely circulated daily periodicals, by extract, which shall include only the facts proving the discriminatory practice on grounds of disability, the identity of the offended person and the convicted parties, and the compensation that was set.

In multiple discrimination cases, the damages could be higher, taking the aggravated conduct of the perpetrator into account. As far as the authors of this report are aware, there is no case law applying this increase in damages.

Non-pecuniary damages do not include interest. Pecuniary damages may, to some extent, include interest or take the devaluation of money into consideration, in particular where the passage of time is a consideration.

Under Portuguese law, there is no right to punitive damages. However, the courts have wide discretionary powers in relation to the amount of non-pecuniary damages that they can award.

- i) Portuguese legislation does not generally provide for preventive and socio-preventive sanctions, in particular injunctions or structural injunctions, except in the case of personality rights defence (which can be violated through discriminatory acts) (Article 70(2) of the Civil Code). There is a specific procedure for such injunctions (Article 878 of the Civil Procedure Code).
- ii) Under Portuguese law, there are no specific pecuniary sanctions for cases of collective redress (*actio popularis* or class actions). In cases of collective redress and according to Article 19(2) of Law 83/95 (the Law on Procedural Participation and Popular Action) final judgments shall be published, at the expense of the losing party and under penalty of contempt, with mention of the final judgment, in two newspapers that are presumed to be read by all those interested in learning about these judgments, at the choice of the judge in the case, who may order that the publication be made by extract of its essential aspects when its length makes publication in full inadvisable.
- iii) There are no sanctions in place to deal with cases of mass discrimination, particularly as a result of the use of AI or automated systems.

However, when the crime of discrimination and incitement to hatred and violence is committed through an informatic system, such as computers, servers, mobile phones, interconnected devices and the communications infrastructure itself, the Court may order the removal of contents (Article 240(3) of the Criminal Code).

b) Pecuniary sanctions – maximum and average amounts

There is no ceiling on the amount of pecuniary sanctions that can be awarded as civil damages compensation. No general information is available regarding the average amounts of compensation awarded to victims of discrimination.

The threshold for compensation of non-material damages seems to have remained low in Portugal (both in the employment area and elsewhere) compared with other countries.²⁰⁷

²⁰⁷ For example, in the Decision of the Lisbon Court of Appeal of 14/4/2024, proc. 1712/21.0T8VFX.L1-4, non-material compensation of EUR 25 000 was granted in a situation of discriminatory behaviours regarding a worker's work schedule, insurance and transportation, leading to injustice and humiliation in the workplace

This reflects a tendency of the Portuguese Courts to view compensation as such (and not as an indemnification), and to conclude that it should be equitable according to several objective factors. No compensation is awarded for mere inconveniences or setbacks (i.e. matters that are not sufficiently serious).

Pecuniary compensation for unlawful discrimination is provided for by law and should reflect the seriousness of the violation, the economic capacity of the offender and the conditions of the person discriminated against (Article 15(2) of Law 93/2017). According to Article 554 of the Labour Code, the company's business volume, the offender's degree of guilt and the seriousness of the offence should be evaluated in determining compensation.

In addition, the following variables are taken into account when calculating compensation in cases of contract termination: the type of contract, the date of its conclusion, how many years the employee has worked for the company (seniority), their level of remuneration (salary and seniority bonuses) and the reason for termination of the contract.

There are minimum and maximum ceilings for fines.

According to Article 16(1) and (2) of Law 93/2017, fines may vary between 1 and 10 times the monthly value of the index of social support for individuals and between 4 and 20 times the same monthly value for legal persons. If the offence results from the omission of a duty, the application of the sanction does not prevent the offender from carrying out this duty if it is still possible (Article 16(5) of Law 93/2017). Recidivism is taken into account for the purposes of setting the actual amount of the fine (Article 16(3) of Law 93/2017). According to Article 16(7) of Law 93/2017, ancillary sanctions can be imposed, such as temporary or permanent closure or suspension of activities and exclusion from public procurement processes or economic benefits.

Regarding fines, no average amounts are known, either in general or in discrimination proceedings, but it is common practice in Portuguese sanctioning law that maximum fines are imposed only in very exceptional cases.

c) Assessment of the sanctions

In theory, sanctions should be effective, dissuasive and proportionate. In practice, they continue to be seldom sought, applied or even known about.

In the experience of the authors, the most commonly applied sanctions may be pecuniary sanctions against employers by ACT, and material compensation or reintegration for wrongful dismissals, although such cases are not published. From the other sanctions listed, it appears that compensation for immaterial damages in the employment field and for the protection of personality rights (under Article 70(2) of the Civil Code) is also used, albeit less so.

There is no general information available on the amount of compensation awarded to victims. No court cases on this issue have been reported on jurisprudence websites or in legal publications.

by the employer. The motive for this discrimination is not clear, since it resulted from retaliation regarding a previous action of reinstatement won by the employee. In this case, the Court argues the need to abandon derisory levels of compensation and maintains that compensation should be effective, dissuasive and proportionate. The worker had petitioned for EUR 37 500. The decision is available at: <https://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/c8283861cd68005980258b120045ef83?OpenDocument>.

One of the main challenges is the lack of public information and the non-existence of a single anti-discrimination portal that could elucidate on competences, procedures and possible consequences.

Even in reports on sectoral cases, such as the INR Report of 2024 under Decree-Law 46/2006, only 5 out of 246 complaints were in the employment sector, and it is reported that the competent authorities communicated just one final decision to the INR regarding complaints of discrimination filed in 2024,²⁰⁸ seven of which related to proceedings initiated in 2023. All of the decisions were to dismiss the case. There were no references in the 2024 report to the type of situations or sanctions, if applied.

ACT provides information (simulators) and avenues of complaint to all employees, either in person or online (<https://portal.act.gov.pt/Pages/Home.aspx>). Despite the fact that ACT has a public registry, in compliance with Resolution No. 41/2013 of the Assembly of the Republic, the data provided is only on convictions relating to discriminatory practices between men and women in the workplace and not regarding other grounds of discrimination.

According to Article 562(1) of the Labour Code, in the case of a very serious administrative offence or a repeat serious administrative offence, committed with intent or gross negligence, an additional penalty of publicity shall be imposed on the offender. This has been provided for but its use has been very limited.²⁰⁹

Under Portuguese law, there are no specific pecuniary sanctions or a specific regime for cases of collective redress (*actio popularis* or class actions), which would be advisable.

d) Enforcement and monitoring of the implementation of sanctions

i) Courts and other adjudicating bodies' mechanisms to monitor or enforce their decisions

Regarding discrimination on the grounds of racial or ethnic origin, Article 15(4) of Law 93/2017 establishes that condemnatory sentences given in terms of civil liability shall be sent to CEARD so that, after becoming *res judicata*, they may be published, for a period of five years, including at least the identification of the legal persons convicted, information about the type and nature of the discriminatory practice and the compensation fixed.

Article 14(2) of Law 3/2024 establishes that judicial and administrative decisions should be sent to CEARD within 10 days, to be recorded by CEARD.

Under Article 14(1) of Law 3/2024 (as previously under Article 23 of Law 93/2017) CEARD should maintain a register of natural and legal persons to whom sanctions have been applied. This very simple registry existed and was available while the former CEARD site was operational but is no longer available online nor updated.

According to Article 24 of Law 93/2017 the HCM (now the CEARD) should maintain a record of discriminatory acts and sanctions applied, in order to raise awareness among the public of matters of equality and non-discrimination and the prevention of discrimination. This record, maintained for a period of five years, should include at least the identity of the convicted person (if a natural or a legal person); information on the type and nature of the discriminatory practice; and the fines and ancillary sanctions imposed.

Since October 2023, complaints directed to CEARD have not been prosecuted or decided upon. Initially, this was because the body was not constituted; more recently, it was

²⁰⁸ See <https://www.inr.pt/documents/11309/1040915/Relat%C3%B3rio+-+Lei+da+N%C3%A3o+Discrimina%C3%A7%C3%A3o+2024/a665129a-9484-4b83-bf59-2136522ef38a>.

²⁰⁹ See https://portal.act.gov.pt/AnexosPDF/SancoesPublicidadeAplicada/Sancoes_acessorias.pdf.

because CEARD lacked human resources. More than 23 complaints are in this situation and could become time-barred following the expiry of their limitation period.²¹⁰

Regarding disability, the application of Law 46/2006 is monitored by the National Institute for Rehabilitation (INR). Once the administrative offence procedure has been concluded, a copy of the files must be sent to INR together with the respective final reports (Article 3 of Decree-Law 34/2007). In accordance with the provisions of Article 12 of Law 46/2006, the INR must establish a register of all the decisions proving discriminatory practices on the grounds of disability communicated by the administrative bodies with sanctioning powers in the matter, and by the courts. In its annual report, the INR includes information on the decisions that have been communicated by administrative bodies and by the courts. To the author's best knowledge, this is the only register that is organised and publicly available.

It is also the responsibility of INR, under Articles 8(3) and 10 of Decree-Law 34/2007, to submit an annual report to the member of the Government responsible for inclusion, which must include a reference to the information collected on the practice of discriminatory acts and any sanctions applied.

- ii) Possibility for courts and other adjudicating bodies to retain jurisdiction after sanctions have been imposed

After sanctions are imposed, appeal is possible. If a decision is definitive, it must be complied with, and this may lead to enforcement proceedings, usually of a judicial nature. If penalties such as the termination of a discriminatory practice, paying compensation, making institutional changes or issuing retractations are imposed, courts and other adjudicating bodies may monitor compliance (in connection with other public authorities such as social services or the police force), and this may lead to enforcement proceedings or the adoption of subsidiary measures.

If a pecuniary sanction or other conditions are not complied with, the criminal sanctions may be converted into a prison sentence.

In some situations, disobedience to a court order can also be punishable.

- iii) Further steps/measures that courts or adjudicating bodies can take in case of non-compliance with the sanction

In general terms, in cases of non-compliance with a sanction, a periodic penalty payment can be imposed by courts. The penalty payment provided for in Article 829-A of the Civil Code is a coercive measure of a pecuniary nature, constituting an accessory judgment to the main judgment. Its purpose is to encourage the debtor to comply with the judgment, by ordering payment of a certain amount for each period of delay in performing the service or for each offence.

Article 564 of the Labour Code states:

- '1 - Whenever the labour offence consists of the omission of a duty, payment of the fine does not exempt the offender from complying with it if this is still possible.
- 2 - The decision imposing the fine shall contain, where applicable, an order for payment of amounts owed to the employee, to be made within the period established for payment of the fine.
- 3 - In the event of non-payment, the decision referred to in the previous paragraph shall serve as the basis for enforcement under the terms of Article 89 of the general regime for administrative offences, as amended by Decree-Law No. 244/95 of 14

²¹⁰ See <https://www.publico.pt/2026/02/21/sociedade/noticia/bloqueio-comissao-racismo-presidente-nao-contratar-ar-alega-ja-nada-impede-2165484>.

September, with the rules of the common enforcement procedure for the payment of a specific amount applying’.

In cases of coercive enforcement or execution procedures, the Court may order a deduction of a pecuniary sanction from salary or assets.

iv) Who bears the burden of enforcing sanctions?

The entities that impose sanctions are also those that bear the burden of its enforcement. These are the administrative bodies – in the case of administrative offences – and the court system, by initiative of the public prosecutor, in the case of criminal sanctions. For civil procedures, it is up to the creditor to initiate an enforcement procedure.

7. BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)²¹¹

Although the transposition period for Directive 2000/43 has not yet elapsed, it is notable that the configuration of the equality bodies in Portugal is not yet adjusted to its provisions. Indeed, besides issues regarding the competences of CEARD, which will be detailed further in this section, the body does not have a clear mandate that covers racial or ethnic origin in the field of employment.

There is a complex architecture of national equality bodies, and it is not clear which are responsible for equal treatment in matters of employment and occupation between persons, irrespective of their religion or belief, age or sexual orientation, nor whether their respective competences will comply with Directive 2000/43.

CEARD, which has been instituted as an independent authority in 2024, has the competence to provide independent assistance to victims of discrimination on the basis of racial and ethnic origin, colour, nationality or ancestry and territory of origin, including by providing victims of discrimination with information necessary for the defence of their rights, under Article 4(2)(g) of Law 3/2024. However, this provision does not mention other litigation measures as defined in Article 10 of Directive (EU) 2000/43, such as 'The right of the equality body to act in court proceedings [including] the right to submit observations to the court, in accordance with national law and practice' or any of the measures identified in Article 10(3). Therefore, CEARD's competences under Law 3/2024 do not yet reach the standards set by Directive (EU) 2000/43.

Concerning the Commission for Citizenship and Gender Equality (Comissão para a Cidadania e a Igualdade de Género – CIG), the current legal framework in Portugal is already partially compliant with the new European standards (Regulatory Decree 1/2012). The CIG successfully fulfils its role in promoting gender equality, drafting public policies, raising awareness and offering support and guidance to victims of discrimination. However, the current regulation still falls short of the directive's mandatory requirements in three main areas. First, the CIG lacks full independence: the Commission operates as a Government department under the Presidency of the Council of Ministers. Secondly, the CIG has no judicial powers: it cannot take direct legal action or start court proceedings on behalf of victims. The new directive requires the body to have the power to act as a party in legal disputes. Thirdly, the CIG has no financial autonomy: it does not possess a fully separate, protected budget. Its funding depends entirely on the state budget, which limits its operational freedom.

7.1 National equality bodies

a) General 'architecture' of equality bodies

The general architecture of equality bodies is complex. There is a wide number of equality bodies responsible for specific grounds and some grounds that do not find a particular equality body responsible.

According to Article 23(1) of the Constitution, citizens may submit complaints against actions or omissions by the public authorities to the Ombudsperson, which will assess them without the power to take decisions and will provide the competent entities and bodies with recommendations for measures needed to prevent or make good any injustices. The Ombudsperson's work is independent of any non-judicial or judicial remedies provided for in the Constitution or the law. Government entities, bodies and agencies must cooperate with the Ombudsperson in the fulfilment of its mission.

²¹¹ Throughout Section 7 of this report, assessments and views concerning compliance with EU law reflect the opinions of the authors, notably on Directive 2000/43, whose transposition deadline is 19 June 2026, after the cut-off date for this report.

The National Institute for Rehabilitation (INR) is, according to Law 46/2006 (Article 8(1)), the governmental office, within the Ministry of Solidarity, Employment and Social Security, responsible for policies for, and the promotion of the rights of, persons with disabilities. Its mission is to ensure the planning, execution and coordination of national policies aimed at promoting the rights of persons with disabilities.

Under the terms of Article 2(1) of Regulatory Decree 1/2012, the Commission for Citizenship and Gender Equality (Comissão para a Cidadania e a Igualdade de Género – CIG) is mandated to promote equality between men and women. Under the same Article there is a mandate to promote gender equality more broadly, which has been extended to include some dimensions of sexual orientation.²¹²

There is no Equality Body in charge of age, but the Authority for Working Conditions (Autoridade para as Condições do Trabalho – ACT) enforces anti-discrimination laws in the labour field including age discrimination.

Other public entities have also competencies in the field of discrimination in their particular areas of intervention, such as the Authority for Preventing and Combating Violence in Sport (APCVD)²¹³ or other bodies in the areas of transport, health, education, etc.

Particularly regarding racial or ethnic origin, colour, nationality, ancestry and territory of origin, the High Commission for Migrations (HCM) assisted by the Commission for Equality and Against Racial Discrimination (CEARD) was the Equality Body until the end of October 2023. By 29 October 2023, the HCM was substituted by the Agency for Integration, Migrations and Asylum (Agência para a Integração, Migrações e Asilo, I.P.) (AIMA), which exercises competences on the grounds of racial and ethnic origin, colour, nationality, language, ancestry and territory of origin.

Law No. 3/2024 of 15 January 2024, as published in the *Official Journal of Portugal*,²¹⁴ established CEARD as an independent administrative authority, with authority powers, that shall function adjacently to the Portuguese Parliament. This is the entity that has competencies under Law 93/2017, which establishes the legal regime for the prevention, prohibition and combating of discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin within the scope of social protection, including in social security and healthcare, social benefits, education, access to and the supply of goods and services that are available to the public, including housing and culture.

Regarding employment, Law 93/2017 does not expressly state that it has jurisdiction over employment matters. It establishes only that 'This Law is without prejudice to the provisions of the Labour Code, the General Law on Labour in the Public Sector and Law No. 3/2011 of 15 February, as regards protection against discrimination in the field of work and employment, and in self-employment' (Article 2(2)).

It is true that the composition of CEARD includes individuals appointed by organisations representing workers and employers, and it can receive complaints regarding any discriminatory practice, including those related to employment (past CEARD reports, no longer available online, explicitly mention complaints in the area of employment).

²¹² Although sexual orientation is not mentioned in regulatory Decree 1/2012, CIG coordinates the National Strategy for Equality and Non-Discrimination 2018-2030 'Portugal + Igual', which integrates the Action Plan to combat discrimination based on Sexual Orientation, Gender Identity and Expression and Sex Characteristics.

²¹³ Regulatory Decree No. 10/2018 of 3 October 2018, available at: <https://diariodarepublica.pt/dr/detalhe/decreto-regulamentar/10-2018-116587910>.

²¹⁴ Law No. 3/2024 of 15 January 2024 was published in the *Official Journal of Portugal* on 15 January 2024 – available at: <https://data.dre.pt/eli/lei/3/2024/01/15/p/dre/pt/html>.

However, when a complaint concerns employment, CEARD has no direct sanctioning competences, since it must refer the matter to ACT, which is the entity with the authority to initiate investigations and issue final decisions (Article 17(3)).

ACT cannot be considered an equality body, at least under Directive 2024/1499 standards, since it does not issue opinions, nor does it intervene in legal proceedings, nor is it independent from the Government and financially autonomous. It is a labour inspectorate but not an equality body.

Therefore, CEARD lacks a clear mandate in employment in relation to racial or ethnic discrimination.

It should be highlighted that the adoption of Law No. 3/2024 was not explicitly intended to transpose Directive 2024/1499 or parts of it. In this sense, and to the best knowledge of the authors, Portugal has not commenced the implementation of Directive 2024/1499 on strengthened standards for equality bodies.

As regards religion, the HCM (but not CEARD) had responsibilities, until October 2023, to promote intercultural religious dialogue and to combat any form of religious discrimination (Article 36(2)(j) and (k) of Decree-law 31/2014). As from October 2023 AIMA has competences regarding inter-religious dialogue, but no mention is made of non-discrimination on the ground of religion (Article 3(2)(f) of the Annex to Decree-Law 42/2023).

- b) Designated body for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The specialised body for the promotion of equal treatment with regard to racial and ethnic discrimination was, until October 2023, the High Commission for Migrations (HCM) assisted by the Commission for Equality and Against Racial Discrimination (CEARD), which was an internal organ within HCM. As stated before, as of October 2023, most of the HCM competencies were integrated in a newly created Agency, the Agency for Integration, Migrations and Asylum – AIMA (Agência para a Integração, Migrações e Asilo, I.P.), a public institute that absorbed some competencies of HCM and the former Portuguese Foreigners and Borders Office (SEF),²¹⁵ that were extinguished.

The former HCM was superseded by AIMA, in some of the competencies established in Law 93/2017. For the purposes of this report, since all references made to HCM should be deemed to be made to AIMA (Article 54(5) of Decree-Law 41/2023), the authors will refer subsequently to AIMA. AIMA is a service of the indirect administration of the Portuguese state (and, as such, not an independent body), was also endowed with responsibilities at the level of racial and ethnic non-discrimination.

This integration of racial and ethnic discrimination issues into a broader agency was criticised by many, including the Portuguese Ombudsperson, not only because of the model followed but also because of the little debate and time surrounding the legislative alterations.²¹⁶

In any case, all references made to HCM should be deemed to be made to AIMA (Article 54(5) of Decree-Law 41/2023 as from 29 October 2023).

Until October 2023, CEARD, a former body of the HCM, promoted equality and non-discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and

²¹⁵ See Decree-Law 41/2023 of 2 June 2023, available at: <https://diariodarepublica.pt/dr/detalhe/decreto-lei/41-2023-213881448>.

²¹⁶ See: <https://jornaleconomico.sapo.pt/noticias/extincao-do-sef-preocupa-provedora-de-justica-critica-morosidade-e-deixa-alertas-para-transicao/>.

territory of origin (Articles 1 and 8(1) of Law 93/2017), covering all the areas that fall under the scope of the Racial Equality Directive and worked at national level.

During the remaining months of 2023, CEARD remained with an undefined status, given that, although its conversion into an independent equality authority was already approved by the Portuguese Parliament in 2023, until January 2024, the law had not been published or entered into force.

On 15 January 2024, Law 3/2024 instituted the CEARD as an independent administrative authority, with authority powers, that shall function adjacently to the Portuguese Parliament.

From Law 3/2024 onwards it seems clear to the authors of this report that CEARD is an independent equality body that will act with independence in the performance of its duties and within the powers conferred to it by law (Article 1(3)).

However, despite being instituted by law, CEARD has not been functioning and has been in a state of paralysis. Since 29 October 2023, its competences (for instance, to process complaints and apply sanctions for discriminatory acts) have not been upheld.²¹⁷

Only on 28 June 2024 was the President of the new CEARD, Isabel Maria Duarte de Almeida Rodrigues, a lawyer and former Secretary of State for Equality and Migration (from 2 May 2022 until 2 April 2024), elected to office by the Portuguese Parliament.²¹⁸ On 4 December 2024, all of CEARD's members took office.

Despite having been 'instituted in practice' as of December 2024, CEARD's activities are still unknown as of 1 January 2026. No dedicated website has so far been created. This is because the support services of CEARD were still not instituted (as at the cut-off date for this report), so, as covered above, the body remains ineffective regarding the application of sanctions and its reporting duties.

Thus, there was no registration or processing of complaints of discrimination in 2024 or 2025, and the usual annual report, setting out the previous year's complaints and cases, has not been published.

Until October 2023, the services of the HCM and CEARD were accessible on an equal basis for all, without costs. There were no specific rules on reasonable accommodation to persons with disabilities.

HCM and CEARD were located in Lisbon, but HCM had two local offices in Porto and Faro. AIMA is located in Lisbon but will establish more local points within the Portuguese territory. CEARD is also located in Lisbon, since it functions adjacently to the Portuguese Parliament.

Although efforts had been made, even from a financial point of view, the presence and visibility of the former equality bodies (HCM and CEARD) throughout the national territory were not as widespread and known to the general public as would have been desired.

As for CEARD, the accessibility of its services is still unknown, as these have not been established in practice. The Government portal where complaints could be made online is not functioning, and no information exists on how complaints are processed.

²¹⁷ See: <https://www.publico.pt/2024/05/04/sociedade/noticia/comissao-analisa-queixas-racismo-parada-ha-seis-meses-2088636> and <https://cnnportugal.iol.pt/videos/racismo-se-a-cicdr-ja-funcionava-mal-agora-esta-mesmo-ausente-temos-de-passar-da-comocao-para-acao-mais-consequente/66367bc30cf2a41c2ed4556f>.

²¹⁸ See the European Commission flash report on Portugal of 18 July 2024, available at: <https://www.equalitylaw.eu/downloads/6124-portugal-election-of-the-president-of-the-commission-for-equality-and-against-racial-discrimination-ceard>.

More recently, a controversy was sparked in the news between the President of CEARD and the Secretary of the Portuguese Parliament about who was to blame for the impasse.²¹⁹

7.2 Political, economic and social context of the designated bodies

Since Portugal has overcome its financial and public debt crises, there is more political support for the designated bodies. However, the role of the equality bodies has not increased significantly in recent years, which continues to be true even after the reform of HCM/CEARD to become the new CEARD, given that this new entity has only gained visibility for the wrong reasons (lack of activities and support).

To the knowledge of the authors of this report, there has traditionally been no political interference in the governance of the bodies, but this may be a result of the fact that the previous bodies (HCM and CEARD) had little relevance in the context of the promotion of equality and non-discrimination. Once the new CEARD is constituted as an independent body, such interference should be prohibited by law. Not providing CEARD with the means to conduct its activities may constitute a form of political pressure, or at least omission.

There is still a high level of popular debate supporting equality and diversity, despite the growth of far-right political parties and movements. The mass media often discuss issues of equality and non-discrimination on the grounds of racial or ethnic origin and report on situations in which equality and non-discrimination have been called in question.

In contrast, there is rather less public debate about the equality bodies, due to their low profile. In practical terms, there was no support for nor hostility towards the previous equality bodies. Most people did not know who they were or what they did; the complexity that characterised the bodies that promoted equality and non-discrimination was no stranger to the Portuguese system.

When issues arose relating to equality and non-discrimination on the grounds of racial or ethnic origin, it was the member of Government responsible for equality and citizenship or the members of Parliament who were more concerned with them. The equality bodies participated in this type of debate – when it existed – only as an accessory entity.

More recently, as stated, the HCM was superseded by AIMA. Despite the fact that the creation of AIMA was motivated more by issues relating to migration/asylum and not by the absolute need to reorganise the field of non-discrimination, it had consequences in this area.

Indeed, AIMA was also endowed with responsibilities at the level of racial and ethnic non-discrimination. As stated in the preamble of Decree-Law 41/2023:

'Aware of the demands and challenges facing the country and Europe in the fight against racism and discrimination and the integration of ethnic groups, and of the internal and international recognition of the HCM in these matters, it was decided to integrate the duties and human resources of the HCM, in terms of combating racism and integrating ethnic groups into AIMA, I.P., retaining the talent and experience built up over the years, thereby also providing for the creation of new synergies and new efficiency gains in these priority areas for the government.

As stated in the Programme of the XXIII Constitutional Government, the fight against racism and all forms of discrimination is a constitutional commitment of our democracy, and measures must be adopted for the social affirmation of minorities, in the prevention and fight against racial segregation, to which AIMA, I.P., will make a fundamental contribution.

²¹⁹ See <https://www.publico.pt/2026/02/21/sociedade/noticia/bloqueio-comissao-racismo-presidente-nao-contratar-ar-alega-ja-nada-impede-2165484>.

The creation of a major agency, with a profile that cuts across different target audiences, thus represents a new level of integration and inclusion, which places rights, freedoms and guarantees at the centre of its work, ensuring the continuity of the humanist policies that have earned international recognition.'

According to Article 3(1) of the Annex to Decree-Law 41/2023:

- '1 – AIMA, I.P.'s mission is to implement national and European public policies on migration, asylum and equality, namely:
- a) Carrying out public migration and asylum policies, promoting the treatment of foreign citizens in compliance with the principle of equality and the prohibition of discrimination, ensuring that they can fully develop their rights in accordance with the Constitution and the law and creating the conditions for them to be able to carry out the activities they wish in Portugal, freely, in compliance with their rights, freedoms and guarantees and economic, social and cultural rights and in accordance with the law;
 - b) To participate in the implementation of the Portuguese state's international co-operation policy in the field of migration and asylum;
 - c) To implement public policies relevant to the integration of ethnic groups, in particular Roma communities, and the management and valorisation of diversity between cultures, ethnicities and religions;
 - d) Regularising the entry and stay of foreign citizens in national territory;
 - e) Managing and maintaining national information systems on foreigners that do not contain police information, under the terms of this decree-law, and their interconnection with European systems in the field of migration and asylum.'

CEARD's competences and activities, which are mainly set out under Law 3/2024, are still relatively unknown to the public.

However, the President of CEARD has featured in some political commitments as well as in the news, asking for the resources to conduct her responsibilities effectively.

CEARD has also submitted three claims regarding Chega publicity billboards to the Public Prosecutor's office, claiming them to be of a criminal nature.²²⁰

7.3 Institutional architecture

In Portugal, until October 2023, the designated body (HCM) did not form part of a body with multiple mandates.

The HCM had a mandate as a national institution for migration. When issues of discrimination on the grounds of racial or ethnic origin, nationality, ancestry and territory of origin arose, the HCM was assisted by CEARD, as its devoted organ regarding these issues.

The HCM was not like an ombudsperson. In Portugal, the Ombudsperson is a constitutional body (Article 23 of the Portuguese Constitution), whereas the HCM was created by legislation. The Ombudsperson is the National Human Rights Institution and holds the UN reporting mandate.

Since AIMA, which superseded HCM, is a body with multiple mandates, the authors do not believe that it will be the formally designated body in racial and ethnic discrimination issues.

²²⁰ See <https://www.dnoticias.pt/2025/10/29/468502-comissao-contra-discriminacao-encaminhou-para-mp-tres-queixas-contra-cartazes-de-ventura/>.

In the view of the authors, the position of a designated equality body is now occupied by CEARD, since it is the entity directly responsible for the application of Law 93/2017. Indeed, this entity as an independent administrative authority that will function in close connection with the Portuguese Parliament will be the more adjusted to accomplish the competence required from an Equality Body under EU Law.

7.4 Status of the designated bodies – general independence and resources

a) Status of the bodies

- Separate or other legal status or personality

Until October 2023 and, according to Article 4(1) of the Framework Law on Public Institutions (Law 3/2004),²²¹ the HCM was a public law legal person and had organs and its own assets. One of its organs was CEARD, as previously stated.

In October 2023, AIMA, which is also a legal person in public law, replaced HCM. CEARD was not formally extinguished.

In 2024, CEARD became an independent body with separate legal personality. According to Article 2(1)(2) of Law 3/2024 of 15 January 2024, CEARD is an independent administrative authority, with authority powers, which functions adjacently to the Portuguese Parliament.

- Selection of governing body

Until October 2023, the governing body of the HCM was designated by a joint ordinance (*portaria*) of the Prime Minister and the responsible member of the Government, following a proposal from the latter (Article 19(3) of Law 3/2004). Therefore, the High Commissioner was not elected, nor is the President of the Directive Council of AIMA.

CEARD was composed of the High Commissioner for Migrations, who presided; one representative of each parliamentary group; one representative from the members of the Government responsible for internal affairs, justice, equality and citizenship, education, science, technology and higher education, employment, solidarity and social security, health and culture, as well as one representative of the regional government of the Azores and Madeira; two representatives of migrants' associations, anti-racist associations, human rights associations, trade unions and employers' associations; and one representative of Roma communities. Finally, it also included three individuals of recognised merit, who were chosen by the other members (Article 7 of Law 93/2017).

According to the new legislation (Law 3/2024), the composition of the CEARD is different. Its President is no longer the High Commissioner for Migrations, but a person elected by the Parliament. In accordance with Article 3(2), its members are:

- b) The president of the CEARD elected by the Assembly of the Republic;
- c) A representative appointed by each parliamentary group of the Assembly of the Republic;
- d) Eight persons appointed by the Government;
- e) One person appointed by each of the Regional Governments;
- f) Two persons appointed by immigrant associations;
- g) Two persons appointed by anti-racist associations;
- h) Two persons appointed by human rights associations;
- i) One person designated by the Roma communities;
- j) Two persons appointed by structures representing workers;

²²¹ Available at: <http://data.dre.pt/eli/lei/3/2004/01/15/p/dre/pt/html>.

- k) Two representatives of employers' associations;
- l) Three persons of recognised merit, co-opted by the other members.

CEARD has a restricted formation, composed of its President and two elected members from its enlarged composition.

The new President of CEARD was elected on 19 June 2024 by the Portuguese Parliament, in accordance with the Resolution No. 39/2024,²²² and CEARD took office as a collective body on 3 December 2024.

- Sources of funding

Until October 2023, the High Commission, assisted by CEARD (whose budget came from the HCM), had no specific budget, as it was not an independent body, although it was accountable to the Court of Auditors (*Tribunal de Contas*)

Since 2024, CEARD has its own budget, inserted into the budget of the Portuguese Parliament. According to Article 10 of Law 3/2024, the competences of the CEARD support services and the respective human and financial resources shall be defined by a specific statute of the Portuguese Parliament.

This statute has not been adopted yet. According to the information provided by the Portuguese Parliament services, however, the Parliament already has the budget and facilities to ensure that CEARD can operate, which the President of CEARD denies.

- Powers to recruit and manage staff

Until October 2023, and according to the Framework Law on Public Institutions (Article 34 of Law 3/2004) and the HCM statutes, included in the Administrative Ordinance (*Portaria*) 227/2015 of 3 August 2015²²³ the HCM had the power to recruit and manage staff, which may be based on the Labour Code or on the General Regime for Contract Work for the Public Sector, as approved by Law 35/2014²²⁴ (Article 34(1) of Law 3/2004). In both cases, under the terms of Article 34(3) of Law 3/2004, staff recruitment had to respect the following principles:

- a. publicising the job offer by the most suitable means;
- b. equality of conditions and opportunities for candidates;
- c. reasons for the decision.

As from October 2023, AIMA is also bound by Law 3/2004, but its personnel was initially drawn from HCM (and SEF), and will be selected according to Articles 10 and 11 of Decree-Law 41/2023.

According to Article 10 of Law 3/2024, the competences of the CEARD support services and the respective human and financial resources shall be defined by a specific statute of the Portuguese Parliament. However, this statute has not been adopted yet.

- Accountability (to whom and how it is exercised)

Until October 2023, the HCM was under the direct authority of the Prime Minister or the responsible member of the Government. This means that the Commissioner was in direct

²²² *Diário da República* No. 124/2024, Series I, 28 May 2024, available at: <https://data.dre.pt/eli/resolassrep/39/2024/06/28/p/dre/pt/html>.

²²³ Available at: <http://data.dre.pt/eli/port/227/2015/08/03/p/dre/pt/html>.

²²⁴ Available at: https://dre.pt/web/guest/pesquisa-avancada/-/asearch/25676932/details/maximized?search=Pesquisar&sortOrder=ASC&tipo=%22Lei%22&types=SERIEI&numero=35_%2F2014.

contact with Government authorities and was in a position to monitor their activities closely and to influence them. The same applied to CEARD.

As from October 2023, AIMA is responsible for equality and migration and is subject to the superintendence and supervision of the member of the Government responsible for equality and migration (Article 1(3) of the Annex to Decree-Law No. 41/2023). It comprises a directive council, a single tax supervisor and a Council for Migrations and Asylum.

Its internal functioning is regulated under Ordinance 324-A/2023 of 27 October 2023.²²⁵ It includes a Department for the Integration of Migrants and a Department for Equality, Combating Racism, Xenophobia and Discrimination (RESPECT).

CEARD is responsible only to the Portuguese Parliament.

a) Independence of the bodies

Until Law 3/2024, the independence of the former equality body was not stipulated in law. The HCM's powers were set out in Decree-Law 31/2014, and there was no guarantee of its independence from the Government. The same happens, from October 2023 onwards, with AIMA.

It must be emphasised that so far, from a legal point of view, the equality bodies were not independent. But, in practical terms, interference by political powers seemed to be slight (or even non-existent, since the authors of this report could not find any reports on such influence), but it cannot be said that the bodies worked independently of the Government.

In the opinion of the authors, the HCM (and naturally its organs) was not an independent body, although there were no reasons to believe that it did not exercise its activities independently.

As for AIMA, it remains to be seen, given the fact that it cumulates competences in the area of non-discrimination with competences in the area of migration, more prone to governmental control.

In 2024, CEARD became an independent body with separate legal personality. According to Article 2(1)(2) of Law 3/2024 of 15 January 2024, CEARD is an independent administrative authority, with authority powers, which functions adjacently to the Portuguese Parliament.

b) Resources

According to information from 2022, the budget for HCM was EUR 18 242 089²²⁶ up until October 2023. According to the HCM Plan for Equality 2022-2023,²²⁷ the body had 205 employees, but only seven were dedicated to the CEARD scope of action.

More recently, according to the available data, the overall budget of AIMA has increased from EUR 81 million in 2023 to 99.8 million in 2025,²²⁸ coming mostly from self-generated income and European funding, although this covers a wide array of competencies including border control. In terms of personnel, according to the same publication, AIMA has 976 workers. It is not known how many workers are working within the non-discrimination mandate of AIMA.

²²⁵ Available at: <https://diariodarepublica.pt/dr/detalhe/portaria/324-a-2023-223473624>.

²²⁶ Plan available at: https://www.acm.gov.pt/documents/10181/224827/Plano_Atividades_ACM_2022.pdf/828b5b32-cc8f-44ef-9868-fa22b3b725f5.

²²⁷ Available at: <https://www.acm.gov.pt/documents/10181/27754/Plano+para+a+Igualdade+2022-2023/c8b6d589-d527-4cc3-83d1-3e0fdf9864a4>.

²²⁸ See <https://aima.gov.pt/media/pages/documents/4ee1bae485-1746027011/plano-de-atividades-2025.pdf>.

According to Article 10 of Law 3/2024, the competences of the CEARD's support services and the respective human and financial resources shall be defined by a specific statute of the Portuguese Parliament. However, this statute has not been adopted yet, nor its services created.

There is no information available about the number of staff (if any) currently working for CEARD or regarding the financial resources at its disposal.

7.5 Grounds and fields covered by the designated bodies

Until October 2023, the HCM dealt with equality and non-discrimination not only on the grounds of racial and/or ethnic origin, colour, nationality, ancestry and territory of origin, but also on religion and, generally, migration issues. Therefore, this equality body was more oriented towards discrimination against migrants than towards equality and non-discrimination on the grounds of racial or ethnic origin in general. In practice, discrimination against migrants was its priority issue, as evidenced by the powers listed in Article 3(2) of Decree-Law 31/2014.

AIMA has superseded these broad competencies, as stated before. According to Decree-Law 31/2023, the grounds covered by the mandate of AIMA are racial and ethnic origin, colour, nationality, language, ancestry and territory of origin (Article 3(1)(nn) of the Annex to Decree-Law 41/2023). AIMA has also competences regarding inter-religious dialogue, but no mention is made to non-discrimination on the ground of religion (Article 3(2)(f) of the Annex to Decree-Law 42/2023).

The 'old' CEARD was the specialised body for equality and non-discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin, according to its mandate as defined in Law 93/2017. According to this statute, its mandate covered social protection, including social security and healthcare, social benefits, education, access to and supply of goods and services made available to the public, including housing and culture.

This has not changed with the reconfiguration of CEARD that took place in 2024. According to Article 4(1) of Law 3/2024, CEARD applies the legal framework for preventing, prohibiting and combating discrimination on the grounds of racial and ethnic origin, colour, nationality, language, ancestry and territory of origin in the fields defined in Law 93/2017.

Law No. 93/2017 focuses on social areas outside the direct employment relationship, such as access to housing, healthcare, education, culture, social benefits, and the provision of goods and services. However, Article 2(2) of Law No. 93/2017 explicitly clarifies that this act 'does not prejudice the provisions of the Labour Code', which means that in the field of employment it is up to the Authority for Working Conditions (Autoridade para as Condições do Trabalho – ACT) to enforce anti-discrimination provisions, despite not being an equality body.²²⁹ Regarding disability, the entities responsible for equal treatment in the employment field are the INR (National Institute for Rehabilitation) and the ACT.

7.6 Competencies of the designated bodies – and their independent exercise

a) Independent assistance to victims

Until October 2023, the HCM had the competence to provide independent assistance to victims, including to provide victims of discrimination with information necessary for the defence of their rights; to guide the parties, provided they gave their consent, for mediation processes, without prejudice to non-judicial means of conflict resolution that are required

²²⁹ Except for ACT, which has a broad mandate, it is not clear if there are other equality bodies responsible for equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, age or sexual orientation, nor if their respective competences comply with Directive 2024/1499.

by law; and to receive complaints and open administrative sanctions proceedings. However, neither the HCM nor CEARD had competence to assist victims in judicial procedures.

As from October 2023 onwards, AIMA has no competence to provide independent assistance to victims.

Since 2024, with the adoption of Law 3/2024, CEARD has had the competence to provide independent assistance to victims, including to provide victims of discrimination with information necessary for the defence of their rights (Article 4(2)(g)). This competence is not being exercised in practice.

b) Independent surveys and reports

In Portugal, and until October 2023, HCM could generally carry out surveys and publish reports in issues relating to migration (in particular under Article 3(2)(i)(n) of Decree-Law 31/2014). CEARD also had competencies to promote studies and research on discrimination based on the factors listed in Law 93/2017 (Article 8(2)(f)) and also to produce statistical information on a periodical basis (Article 8(2)(m)).

In addition, it was up to CEARD to prepare an annual report on the situation of equality and non-discrimination on the basis of the factors listed in Article 1. No information exists on the Report for 2023, since CEARD was in a situation of paralysis.

From October 2023 onwards, AIMA can present independent surveys, according to Articles 13 (c) and (k) of Ordinance (Portaria) 324-A/2023 of 27 October 2023, which mentions projects, actions of information and the definition of execution indicators. However, it has no competences on the presentation of independent reports (for instance the annual report) on non-discrimination.

According to the new legislation (Law 3/2024), CEARD is still the competent body to promote studies and research on discrimination based on the factors listed in Law 93/2017 (Article 4(2)(f)); to produce statistical information on a periodic basis (Article 4(2)(m)); and to prepare an annual report on the situation of equality and non-discrimination on the basis of the factors listed (Article 4(4)). This competence is not being exercised in practice.

c) Recommendations

Until October 2023, the HCM could generally combat all forms of discrimination based on colour, nationality, ethnic origin or religion, regardless of the environment in which they occurred, through public awareness actions, campaigns or events (Article 3(2)(l) of Decree-Law 31/2014). However, it was CEARD that had the competence to make specific recommendations on discrimination issues, according to Article 8(2)(d) of Law 93/2017. With regard to independence, recommendations were in practice proposed in an independent manner.

This has not changed with the reconfiguration of CEARD that took place in 2024. According to Article 4(2)(d) of Law 3/2024, CEARD has the competence to make specific recommendations on discrimination issues. This competence is not being exercised in practice.

AIMA has also a consultative body, the Council for Migrations and Asylum, that can issue opinions and recommendations (Article 7(4)(d) of Annex to Decree-Law 41/2023), but it seems to be only in the migration and not in the non-discrimination field.

d) Prevention, promotion and awareness-raising

Until October 2023, and under Article 3 of Decree-Law 31/2014, HCM could: fight any forms of discrimination on the grounds of race, skin colour, nationality, ethnic origin or religion, through positive awareness, education and training activities.

According to Law 93/2017, it was incumbent upon CEARD to promote education, training, and awareness-raising on human rights and to prevent and fight discrimination on the grounds listed in Article 1 (Article 8(2)(n)).

From the authors' point of view, this competence was effectively exercised in an independent manner, in practice.

This has changed with the reconfiguration of CEARD that took place in 2024, since this competence is no longer explicitly included in Article 4 of Law 3/2024. This runs clearly in contradiction with Article 5 of Directive (EU) 2024/1499.

As from October 2023 AIMA has competences in awareness-raising, information, education and training to promote cultural diversity and combat racial discrimination (Article 13(a)(b)(c) of Ordinance 324-A/2023).

e) Other competencies

CEARD also had other competencies, according to Article 8 of Law 93/2017, for instance:

- to promote the establishment of codes of good practice in combating discrimination on the grounds indicated in Article 1 of Law 93/2017;
- to propose measures aimed at removing provisions laws, regulations and administrative provisions against the principle of equality and non-discrimination;
- to articulate with the competent bodies in the field of discrimination on the grounds other than those indicated in Article 1 of Law 93/2017, in cases of multiple discrimination.

This did not change significantly with the reconfiguration of CEARD that took place in 2024. According to Article 4(2)(e)(i) of Law 3/2024, CEARD has the competence to propose measures aimed at removing provisions, laws, regulations and administrative provisions against the principle of equality and non-discrimination; and to liaise with the competent bodies in the field of discrimination in cases of multiple discrimination. The authors of this report are not aware if this competence is being exercised in practice.

The competence of establishing codes of good practice in combating discrimination was deleted.

7.7 Legal standing of the designated bodies

In Portugal, the designated body until October 2023 (the HCM) had no legal standing to bring discrimination complaints on behalf of either identified victims or victims who are not identified. In addition, the HCM had no legal standing either to bring discrimination complaints to court ex officio or to intervene in legal cases concerning discrimination, such as through *amicus curiae*. The same is applicable to CEARD, since it only has the power to inform victims of discrimination about the defence of their rights (Article 4(2)(g) of Law 3/2024).

AIMA also has no legal standing to bring discrimination complaints on behalf of either identified victims or victims who are not identified.

This situation will have to be changed in order to comply with Article 10 of Directive 2024/1499, but no efforts have been made so far in this regard. The 2025 *ECRI Report on Portugal*²³⁰ highlights the CEARD's lack of competences in judicial proceedings as a sign of concern.

However, in accordance with Article 11 of Law 93/2017, any dispute emerging from the application of this Law can be resolved through a mediation procedure, which should be initiated by CEARD or at the request of the parties, and with the consent of the offender and the victim or their legal representatives. The new CEARD, like the old, does not have the power to refer a case to a court of law if mediation is unsuccessful. Claimants must seek judicial redress themselves – for instance, in employment cases.

As from 2024 and the new legislation (Law 3/2024), the major innovation in this regard is the provision that the CEARD has its own mediation services and therefore provides this service directly, rather than just referring to external mediators. However, it will only be called upon to act at the request of the parties (Article 12).

7.8 Dispute resolution

a) Quasi-judicial functions

In Portugal, until October 2023 there was no quasi-judicial equality body, nor any separate quasi-judicial body/institution competent to decide on discrimination cases. Neither HCM or CEARD could issue non-binding opinions or binding decisions, except for the power to impose sanctions.

With the institution of CEARD as an independent administrative entity, it can be said that it will act as a quasi-judicial equality body.

The CEARD has the power to issue binding decisions by imposing sanctions, but has no power to issue non-binding opinions.

Power to impose sanctions

i) Power to impose sanctions

Until October 2023, according to Article 8(2)(k) of Law 93/2017, the former CEARD had the power to impose fines and ancillary penalties in the context of administrative offence proceedings.

The competence for initiating the proceedings belonged to the President of the Commission, who was the High Commissioner for Migrations and was empowered with the instruction of the proceeding. This proceeding was to respect the due process of law (Articles 20-21).

Since October 2023, the competence to impose sanctions seems to have been blocked, with no new or pending procedures being conducted.

Indeed, AIMA did not supersede HCM in these competences. According to the preamble of Law 41/2023, it is said that:

'This decree-law enshrines this paradigm shift, creating AIMA, I.P., which succeeds SEF in its administrative duties relating to foreign citizens and the High Commission for Migrations, I.P. (HCM, I.P.), except for: i) the latter's duties relating to social inclusion programmes for children and young people from more vulnerable socio-

²³⁰ See <https://rm.coe.int/sixth-report-on-portugal/1680b6668d>.

economic backgrounds, which are transferred to the Portuguese Institute for Social Inclusion (I.P.). (HCM, I.P.), with the exception of: i) the latter's duties relating to social inclusion programmes for children and young people from more vulnerable socio-economic backgrounds, which are transferred to the Portuguese Institute of Sport and Youth, I.P.; and ii) the duties relating to administrative offences arising from the legal regime for preventing, prohibiting and combating discrimination on the grounds of racial and ethnic origin, colour, nationality, ancestry and territory of origin'.

As from 2024, it is clear that the new CEARD is a new equality body with the power to impose fines and ancillary penalties in the context of administrative offence proceedings (Article 4(2)(k)) and to receive complaints and initiate proceedings (Article 4(2)(i)). It should also maintain a registry of the sanctions applied (Article 14). These competences are not being exercised in practice.

ii) Nature and level of sanctions that can be imposed

Any discriminatory practice by a natural person constitutes an administrative offence punishable by a fine of between 1 and 10 times the value of the Social Support Index. (Article 16(1) of Law 93/2017). Any discriminatory practice by a public or private legal person, under the terms of Article 4, will constitute an administrative offence punishable by a fine ranging from 4 to 20 times the value of the social support index (Article 16(2) of Law 93/2017).²³¹

The fines provided may be replaced by admonitions where the reduced gravity of the discriminatory practice and the culpability of the offender so justify, without prejudice to the application of ancillary penalties (Article 16(7) of Law 93/2017).

These provisions have remained unchanged even after the 2023/2024 reform of the equality bodies.

iii) Possibility to appeal

Since the penalties are of administrative nature, appeal to CEARD itself is possible according to the Code of Administrative Procedure. Its decisions may also be appealed in the courts.

These provisions have remained unchanged even after the 2023/2024 reform of the equality bodies.

iv) Enforcement of binding decisions

If sanctions are not appealed to courts, they must be complied with, and execution procedures may ensue. The number of sanctions that has been imposed is nonetheless not very high, and in less serious cases a fine can be substituted by an admonition, which raises concerns regarding the effectiveness of such sanctions.

According to Article 8(c) of Law 93/2017, CEARD is responsible for making public, through all means at its reach, the cases of effective breach of the law.

These provisions have remained unchanged even after the 2023/2024 reform of the equality bodies.

²³¹ According to Ordinance 6-B/2025/1 of 6 January, the Social Support Index for 2025 was EUR 522.50.

v) Implementation of non-binding opinions

Not applicable.

b) Amicable settlements

According to Article 8(2)(h) of Law 93/2017, one of the competencies of CEARD is to 'refer the parties, once they have given their consent, to mediation processes, without prejudice to extrajudicial means of conflict resolution that are mandatory under the terms of the law'. Under Article 11 of Law 93/2017, any dispute may be resolved through a mediation procedure at the instigation of the Commission or at the request of the parties, and with the consent of the offender and the victim or their legal representatives. The mediator of the dispute is an independent and impartial third person whose main function is to facilitate communication, chosen by agreement between the parties and qualified with a mediation course in the criminal area taught by an entity certified by the Ministry of Justice.

This means that mediation is explicitly seen as a way to promote good practices and reconciliation in non-discrimination cases.

As from 2024 and under the new legislation (Law 3/2024), the major innovation in this regard is the provision that the CEARD has its own mediation services and therefore provides this service directly rather than just referring to external mediators. However, it will only be called upon to act at the request of the parties (Article 12).

7.9 Procedural safeguards

Until October 2023, there were no procedural safeguards established in the Portuguese legislation as CEARD did not act itself as a mediator but may only advise on the use of mediation.

As from 2024, the major innovation in this regard is the provision that the CEARD has its own mediation services and therefore provides this service directly rather than just referring to external mediators.

Since this is a new possibility, no procedural safeguards, for instance regarding impartiality, have so far been set out.

7.10 Data collection by the designated bodies

a) Registration of complaints and decisions

Equality bodies are obliged to register the number of complaints received and decisions made by ground, field and type of discrimination (Article 24 of Law 93/2017).

According to the 2022 Report on Equality and Non-Discrimination,²³² the latest available, 491 complaints were received by CEARD, representing an increase of around 20.3 % compared with 2021, when 408 complaints were filed. Of those complaints, 77.2 % concern situations directed at specific and determined persons, while 13.8 % concern discriminatory practices allegedly directed at communities or social groups.

Because of the inactivity of CEARD, there have been no reports from 2023 to 2025.

²³² Available at:
https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=126693&ACT_TP=PRC.

Under Article 4 of Law 3/2024, the registration and publication of data on complaints received and decisions taken is one of the competences of the new CEARD (Article 4(2)(b)(4) and Article 14). However, no data for 2023 to 2025 has so far been provided.

b) Equality data collection

In Portugal, HCM and CEARD did not collect general equality data and there is no record that they accessed data collected by other entities that was not available to the general public. This collection seems not to be one of the competences of AIMA, under Decree-Law 41/2023, nor of the new CEARD, under Law 3/2024.

This situation will have to be changed in order to comply with Article 16 of Directive 2024/1499, but no such efforts have been made so far.

7.11 Roma and Travellers

Until October 2023, HCM was the National Roma Communities Integration Strategy's National Focal Point. It was responsible for collaborating in the definition, implementation and evaluation of the public policies regarding Roma communities. The HCM organised, every year, the ENICC Implementation Report which provided data and information concerning the main objectives of the strategy.²³³

For this purpose a Consultative Commission for the Integration of Roma Communities and an Observatory for Roma Communities was established. The Observatory had a very intense activity to promote dialogue between academia, policy makers, non-governmental organisations and Roma people and encourage Roma equality and inclusion.

The HCM also relied on the use of intercultural mediators to achieve greater integration of this ethnic group.

In 2018, the High Commission for Migrations (HCM) created the PAAC – Roma Associations Support Programme, in the implementation of the National Strategy for the Integration of Roma Communities (ENICC 2013-2022). This programme focuses on the mobilisation, involvement and active participation of Roma communities, in particular Roma associations. The projects must promote associative capacity building, anti-discrimination and public awareness, training on citizenship, as well as the knowledge of Roma history, language and culture and other initiatives that directly contribute to the implementation of the goals set out in the priorities of the ENICC. In 2024, a new edition of PAAC was initiated, now under the aegis of AIMA.²³⁴

AIMA succeeded the HCM also regarding the 'integration of ethnic groups, more particularly, Roma communities' (Article 8(a) of Decree-Law No. 41/2023). AIMA includes a Directorate of Studies for the Promotion of Integration and Inclusion of Roma Communities (ROMA) within its Department for Equality and Combat against Racism, Xenophobia and Discrimination (RESPECT).

However, the addition of Roma integration to AIMA's roles has been criticised by many, including the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, which has issued its fifth Opinion on Portugal.²³⁵ ECRI was also critical in its 2025 report on Portugal.²³⁶

²³³ Available at: <https://www.acm.gov.pt/-/estrategia-nacional-para-as-comunidades-ciganas-enicc-concig>.

²³⁴ Information is available at: <https://aima.gov.pt/pt/noticias/programa-de-apoio-ao-associativismo-imigrante-paai-2024-abertura-de-candidaturas>.

²³⁵ See https://cdn-images.rtp.pt/icm/noticias/docs/6d/6db891969dd4f61bd7edf982b78a427a_7eb0d1a76044f67633f13e8f2094277d.pdf.

²³⁶ See <https://rm.coe.int/sixth-report-on-portugal/1680b6668d>.

8. IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The HCM provided information on its website about discrimination in general and discrimination on the grounds of racial or ethnic origin specifically. CEARD did the same. However, the web pages have been disabled, which leads to fears that relevant information on non-discrimination has been lost, at least for the general public. AIMA's website has some information, for instance, on the integration of Roma communities, but does not focus on non-discrimination. The 'new' CEARD does not have a website yet.

In respect of labour matters, Article 24(4) of the Labour Code imposes on employers a duty to display on their premises information on the rights and duties of workers in relation to equality and non-discrimination. However, the dissemination of information against discrimination in workplaces has not been very visible so far. The law does not specifically require employers to provide information in a form that is accessible to all persons with disabilities. Trade unions provide information in an accessible way.

The Directorate-General of Employment and Labour Relations (Direcção Geral do Emprego e das Relações de Trabalho) provides information on its website²³⁷ on national policy measures in this field, as well as on European Union actions to combat discrimination. It also makes the relevant documents available.

Regarding sexual orientation, the Commission for Citizenship and Gender Equality (Comissão para a Cidadania e a Igualdade de Género – CIG)²³⁸ provides information on its website about discrimination on the grounds of sexual orientation, setting out the applicable legislation and a list of entities and NGOs offering technical and financial support to the LGBTI+ community. The Commission also provides a discrimination complaint form.

Concerning disability, the National Institute for Rehabilitation's website offers guidance on discrimination on the grounds of disability and the applicable legislation. It also provides a discrimination complaint form.²³⁹

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

Several Government agencies and the HCM were engaged in dialogue with NGOs in order to promote the principle of equal treatment. Some NGOs receive funds in order to develop activities in this area. NGOs are represented in several commissions.

Above all, the HCM's activities took the form of encouragement, in the sense of promoting the work of association leaders and making them responsible for the work carried out; increasing the level of dynamism of associations and their membership levels; and promoting adherence to what their communities require of associations, as well as acknowledging the difficulties experienced by the community in general. For instance, the HCM established the CLAIM network (a local network for providing proximity support to immigrants) with 154 offices and a mobile CLAIM unit working in close association with municipal entities and associations. As from October 2023, AIMA has included a consultative body for migratory and asylum issues in which non-governmental entities are represented. It also has a Department for Equality and Combat against Racism,

²³⁷ See <https://www.dgert.gov.pt/?s=discrimina%C3%A7%C3%A3o>.

²³⁸ See <https://www.cig.gov.pt/area-lgbti/campanhas/>.

²³⁹ See <https://www.inr.pt/nao-discriminacao>.

Xenophobia and Discrimination (RESPECT) to promote pro-diversity and anti-discrimination initiatives, to establish partnerships for national and international projects and to promote associations among migrant and Roma communities. CEARD's internal administrative organisation is still not established.

Regarding disability, Decree-Law 106/2013 of 30 July 2013,²⁴⁰ which sets out the statute for NGOs for persons with disabilities, establishes that the state shall support the contribution of NGOs in defining and implementing the national policy on the prevention of the occurrence of disability and the rehabilitation and participation of persons with disabilities (Article 8(1)). Public support may take the form of operating support or support for projects. The National Institute for Rehabilitation, I.P. (INR, I.P.) is the main institutional interlocutor for supporting non-governmental organisations for persons with disabilities (NGOPDs).

The National Institute for Rehabilitation's Project Funding Programme²⁴¹ is a programme that the INR organised to provide financial support for projects submitted by NGOPDs registered with it. The programme is launched annually and honours projects that promote the rights, quality of life and inclusion of people with disabilities.

The Pessoas 2030 programme,²⁴² which is dedicated to demography, qualifications and inclusion is aimed at the least developed regions of mainland Portugal (Ordinance 235/2023 of 30 October 2023). It includes interventions in the areas of active employment policies, education and professional and higher education training, combating material deprivation, social inclusion, and equal opportunities. From November 2024 to February 2025²⁴³ applications were opened for technical and financial support for civil society organisations (NGOs) working in the area of equality and non-discrimination, with the aim of strengthening their technical and financial capacity, as well as support for other non-profit civil society organisations working and prioritising their interventions in the areas of equality and non-discrimination, in order to consolidate the role of these organisations among the populations in which they operate.

The Action Plan to Combat Discrimination on the grounds of Sexual Orientation, Gender Identity and Expression and Sexual Characteristics (2023-2026)²⁴⁴ affirms that the Portuguese Government shall provide technical and financial support to Non-Governmental Organisations (NGOs) working in the areas of citizenship and equality. The funding is intended for NGO projects, measures and actions that promote gender equality and the rights of lesbian, gay, bisexual, transgender and intersex people. A call for proposals is regularly issued to provide technical and financial support to LGBTI+ NGOs. The Commission for Citizenship and Gender Equality (Comissão para a Cidadania e a Igualdade de Género – CIG) assesses and evaluates the legal compliance and relevance of applications against the Commission's priority themes so as to allocate the total available budget among candidates, in accordance with pre-defined criteria. The application window for the most recent call for proposals ran from 6 January 2025 to 7 February 2025.²⁴⁵

A recent report commissioned by the Calouste Gulbenkian Foundation, *Diagnosis of NGOs in Portugal 2015-2024: Final Report*,²⁴⁶ provides statistical and administrative data on developments among NGOs (in culture and the arts, human rights and international

²⁴⁰ See [https://cdhps.fpasurdos.pt/ficheiros/files/Decreto_lei_Estatutos_ONGPD\(1\).pdf](https://cdhps.fpasurdos.pt/ficheiros/files/Decreto_lei_Estatutos_ONGPD(1).pdf).

²⁴¹ See <https://www.inr.pt/apoio-funcionamento-2025>; https://www.cig.gov.pt/wp-content/uploads/2025/01/AVISO-PESSOAS-2024-30_Apoio-ONG-Igualdade-republicacao_28-Fev-2025.pdf.

²⁴² See <https://pessoas2030.gov.pt/2024/11/04/4-milhoes-de-euros-para-apoio-tecnico-e-financeiro-a-organizacoes-da-sociedade-civil-que-atuem-na-area-da-igualdade-e-nao-discriminacao/>; <https://diariodarepublica.pt/dr/detalhe/portaria/325-2023-223473637>.

²⁴³ See <https://portugal2030.pt/wp-content/uploads/sites/3/2026/01/unnamed-file.pdf-191.octet-stream>.

²⁴⁴ See https://www.cig.gov.pt/wp-content/uploads/2025/01/RCM-92_2023_Planos-de-Acao-ENIND.pdf.

²⁴⁵ See <https://www.cig.gov.pt/area-lgbti/apoio-tecnico-e-financeiro-lgbti/>.

²⁴⁶ See https://cdn.gulbenkian.pt/cidadaos-ativos/wp-content/uploads/sites/42/2024/11/PCA_Catolica_PT_Web.pdf.

activities) between 2014 and 2024. According to this report, the newer NGOs struggle with dependence on external funding, difficulties in retaining talent and language barriers when they have foreigners as beneficiaries. The lack of a robust formal structure is another area of concern. It is essential to address these weaknesses in order to face the threats posed by volatile funding, competition in the sector, changes in public policy and the political and social climate. In older organisations, dependence on external funding and the challenges of retaining talent are also evident. Bureaucracy, complexity in processes and limited responsiveness are common weaknesses. Lack of performance evaluation and limitations in communication and marketing have also been noted. These aspects are all the more important as the threats felt by this group relate to instability in public funding, competition with other NGOs, legislative and political changes and socio-economic challenges.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 of Directive 2000/43 and Article 13 of Directive 2000/78)

Dialogue between social partners takes place within several commissions and bodies, ensuring the participation of associations representing immigrants, human rights activists, trade unions, employers' associations and social solidarity institutions in the development of policies promoting social integration and combating exclusion, such as:

- Commission for Equality and Against Racial Discrimination (CEARD);
- National Institute for Rehabilitation (Instituto Nacional para a Reabilitação – INR)²⁴⁷
- Commission for Religious Freedom (Comissão da Liberdade Religiosa – CLR). (Article 52 ff. of Law 16/2001 – Law on Freedom of Religion);
- Economic and Social Council (Conselho Económico e Social – CES) (Article 92 of the Constitution).

The workers' commissions (comissões de trabalhadores), their coordinating commissions (comissões coordenadoras), trade unions and employers' organisations may advise on proposed legislation that affects the rights and duties of employers and employees, before it is approved (Article 470 of the Labour Code).

According to Article 471 of the Labour Code, the Permanent Commission for Social Dialogue, which is composed of representatives of trade unions, employers' organisations and the state, and is part of the Economic and Social Council, may also give advice on proposed legislation. These procedures are in accordance with Article 11 of Directive 2002/14/EC, which covers social dialogue.

In 2023,²⁴⁸ an Observatory on Hate Speech, Racism and Xenophobia was created in order to produce, collect, process and disseminate information and knowledge on racism, xenophobia and discrimination in the various areas covered by the National Plan to Combat Racism and Discrimination 2021-2025. The work of this body also includes three other objectives: support for policymakers, researchers and professionals through the preparation of diagnoses and opinions on racism and discrimination, and practical tools to promote equality and non-discrimination; the promotion of education, training and awareness-raising on human rights and the prevention of and fight against racial discrimination; and support for civil society organisations.

- d) Addressing the situation of Roma and Travellers

There is no specific body or organ appointed at a national level to address Roma issues. Nonetheless, within the national Roma communities strategy, an Observatory for Roma Communities, as an informal unit, was created under the scope of the HCM in order to further investigation, publications, events and partnerships in the field.

²⁴⁷ See: National Institute for Rehabilitation (Instituto Nacional para a Reabilitação) website, www.inr.pt/.

²⁴⁸ See: <https://novalaw.unl.pt/observatorio-do-racismo-e-xenofobia/>.

AIMA is now the competent entity for the application of the National Roma Communities Integration Strategy and includes a Directorate of Studies for the Promotion of Integration and Inclusion of Roma Communities (ROMA) within its Department for Equality and Combat against Racism, Xenophobia and Discrimination (RESPECT).

The Observatory for Roma Communities was deactivated and its multimedia archive is no longer directly available online.²⁴⁹ This has been criticised.

In November 2025, the PESSOAS 2030 Programme launched a call for applications, open until June 2027, for Support for Local Roma Inclusion Plans.²⁵⁰ Municipalities in the North, Centre and Alentejo regions are eligible to apply. Through a call for proposals, PESSOAS-2025-26 will fund the implementation of local Roma integration plans through a participatory, networking and community-based approach. These initiatives may span the domains of equality, inclusion, participation, education, employment, health and housing.

Other initiatives have been taken by NGOs and the IEFPP to train Roma – particularly younger members of the community – for employment. Racist prejudices still persist among certain employers, which mean that the Roma suffer racial discrimination in recruitment as well as in other spheres of social life. The ongoing programmes and initiatives tend to narrow this gap between the rest of the population and the Roma communities.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

Portugal has taken the necessary measures to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

This is especially true in the area of employment, but also in other fields of social and economic life such as housing, education and access to social advantages.

Alongside the fact that most of the framework legislation adopted over the past decade makes explicit reference to the principle of non-discrimination, Article 13 of the Portuguese Constitution provides the structural base for a full and all-encompassing legal framework against discriminatory behaviour.

According to Article 204 of the Constitution, all courts and tribunals must refuse to enforce any rules deemed to be unconstitutional. Therefore, all judicial organs may analyse the conformity of all kinds of behaviour with the non-discrimination principle. However, cases going to court are scarce and in some of them discrimination is not invoked by the claimant (or not invoked properly).

It should be noted that Law 93/2017 adopted by the Portuguese Parliament was subject to a legislative procedure in which a technical note was produced (22 March 2017)²⁵¹ that assessed the need to comply with the EU's enforcement requirements. However, no thorough assessment of compliance with the Directives was done.

²⁴⁹ See <https://www.acm.gov.pt/-/site-do-observatorio-das-comunidades-ciganas-obcig-ja-esta-no-ar>.

²⁵⁰ See <https://portugal2030.pt/wp-content/uploads/sites/3/2025/12/AVISO-PESSOAS-2025-26-PLICC-Implem.pdf>.

²⁵¹ See <https://app.parlamento.pt>.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

All contracts, collective agreements and other rules that conflict with the principle of equal treatment can be declared null and void by the courts. Any discriminatory clause in such contracts that contravenes the provisions of the Labour Code is to be considered invalid.

Moreover, Article 7(2) of the Labour Code states that provisions contained in collective agreements that are already in force and contrary to the provisions set out in the Labour Code have to be replaced within one year of the enactment of the statute or be considered null and void.

Other provisions that may be included in future contracts, collective agreements, internal rules of undertakings, rules governing independent occupations and professions (if applicable) and rules governing workers' and employers' organisations, to the extent to which they may breach the equality and non-discrimination provisions of the Labour Code, will of course also be invalid. They are to be so deemed by those bound by them and can be so declared by any court, as provided for either by the general rules of contract law (e.g. Articles 285 *et seq.* of the Civil Code) or by the provisions of the Labour Code itself (under Article 478(1)(a) of the Code, collective agreements cannot go against 'imperative legal provisions').

9. COORDINATION AT NATIONAL LEVEL

9.1 Coordination at the governmental level

Until October 2023, the office of the HCM had responsibility for issues relating to immigration and ethnic minorities, and is under a duty to combat racism, but it had no responsibility for coordinating other bodies working in this area. The same happens nowadays with AIMA and CEARD.

The Authority for Working Conditions, formerly the General Labour Inspectorate, deals with some anti-discrimination issues, but it does not have responsibility for coordination either. The same can be said for the National Institute for Rehabilitation.

Within the Ministry of Justice, the Legislative Policy and Planning Office (Gabinete de Política Legislativa e Planeamento – GPLP) is responsible for planning the implementation of directives and other EU instruments, but at a formal rather than substantive level. The Ombudsperson, as an autonomous authority independent from Government, cannot exert any coordination over Government-based bodies.

There are several municipal anti-racism and anti-discrimination plans in Portugal, which means that municipalities, at a local level, also have some competencies, albeit limited, with regard to non-discrimination.

Therefore, a variety of entities with somewhat fragmented responsibilities in the areas of equality and non-discrimination exist, and the coordination of their activities is not as clear as would be desirable, which runs contrary to the transversal and global nature of anti-discrimination policy.

Indeed, Portugal traditionally adopts a 'unitary' perspective – not intersectional – according to which each discriminatory factor is regulated by totally different entities, laws and policies.²⁵² It is mainly through obligations for sharing of data and information, as well as by adopting plans that are under the same 'strategic umbrella', that coordination is achieved – at least to an acceptable level – in Portugal.

9.2 National strategies and action plans

LGBTIQ

Concerning LGBTIQ discrimination, in 2018, the Council of Ministers adopted a resolution²⁵³ to approve the strategy *Portugal + Equal – National Strategy for Equality and Non-Discrimination 2018-2030*, which is the main strategic instrument regarding equality and non-discrimination in Portugal. The Strategy is dedicated to three main fields, including three action plans: equality between men and women (IMH); violence against women, gender violence and domestic violence (VMVD); and discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics. In relation to the third pillar, the strategy intends to promote the mainstreaming of non-discrimination issues related to LGBTI persons and to fight all forms of violence based on sexual orientation, gender identity, gender expression and sex characteristics. The three Action Plans established concrete measures to be developed in the first four years of implementation (2018-2021) to be revised every four years. According to the Council of Ministers Resolution 61/2018, it was up to CIG to submit to the member of Government responsible for the area of citizenship and equality a proposed revision of the Action Plans, up to six months before the end of the plan's life cycle, based on the monitoring reports

²⁵² See Alba A., 'A introdução da interseccionalidade em Portugal: Repensar as políticas de igualdades', *Revista Crítica de Ciências Sociais* [Online], 90, 2010, DOI : 10.4000/rccs.1760.

²⁵³ Council of Ministers, Resolution 61/2018, 8 March 2018, *Diário da República*, Série I-A, No. 97, 21 May 2018.

and ongoing or formative evaluation. The revised Action Plan was launched with a public consultation process (including civil society) in 2022-2023. The public consultation was held between 17 January and 7 February 2022. For that reason, in August 2023, three new Action Plans (Resolution 92/2023²⁵⁴) have been published, for the period 2023-2026: (a) an action plan for equality between women and men (PAIMH); (b) a plan of action for preventing and combating violence against women and domestic violence (PAVMVD); and (c) a plan of action to combat discrimination based on sexual orientation, gender identity and expression and sexual characteristics (PAOIEC). The new Action Plans adopt an intersectional approach. This includes the presentation of a white book on intersectionality and recommendations to harmonise anti-discrimination protection in Portugal regarding intersectionality.

There is also a National Health Strategy for Lesbian, Gay, Bisexual, Trans and Intersex People, adopted by the Minister of Health in 2019, and the first edition is available online.²⁵⁵ There is no information on the public consultation for this strategy, however, nor is intersectionality mentioned. The Strategy identifies three levels of action within the health system: Level 1 (primary healthcare, including, for instance, units of family health); Level 2 (including sexology consultations and medical procedures); and a Level 3 (including the Centre for Specialised Intervention). It adds that the development of this Strategy requires an organisational model that includes a national coordination team, regional coordination teams at the level of the regional health authorities and focal points in local health units, hospital centres and hospitals.²⁵⁶ In 2023, Dispatch 5643/2023²⁵⁷ created a group to accompany the implementation of such Strategy, that should meet at least each trimester and report each semester. The group, made up of representatives of the services under the supervision of the member of the Government responsible for health and representatives of associations of LGBTI people and other associations working in the area of health care for LGBTI people, has presented a set of proposals aimed at overcoming difficulties identified in prevention measures, health promotion, and access to and provision of care for LGBTI people. Recently, the Portuguese Government (Dispatch 3821/2024²⁵⁸) decided to integrate the group into the Directorate-General for Health, changing its name to the Advisory Group for Sexual and Gender Diversity, but essentially maintaining its mission. There has been no known public activity by this advisory group.

According to Law 75/2013 of 12 September 2013 (which establishes the Legal Regime of Local Authorities), the municipalities have the competence to adopt 'Municipal Plans for Equality' (Article 33). Thus, some municipalities have adopted LGBTIQ municipal plans.

Racial or ethnic origin

Two specific anti-racism strategies are in place: (1) the National Plan to Combat Racism and Discrimination 2021-2025; and (2) the Plan for the Prevention of Manifestations of Discrimination in the Security Forces, which has a broader scope but with a particular focus on racism.

The 'National plan to combat racism and discrimination (PNCRD) 2021-2025 – Portugal Against Racism', was published by the Resolution of the Council of Ministers 101/2021 of 28 July 2021.²⁵⁹ The resolution acknowledges the work of various civil society agencies on this important issue, and the contributions and recommendations of the Working Group for the Prevention and Combating of Racism and Discrimination (coordinated by the former HCM) and a related public consultation process. This is the first national plan on racism and discrimination, and aims to combat discrimination based on racial or ethnic origin,

²⁵⁴ Council of Ministers, Resolution 92/2023, 29 June 2023, *Diário da República*, Série I, 14 August 2023.

²⁵⁵ Available at: <https://apmgf.pt/wp-content/uploads/2023/06/i025699.pdf>.

²⁵⁶ In 2023, Dispatch 5643/2023 of 17 May 2023 created a group to accompany the implementation of such Strategy, that should meet at least each trimester and report each semester.

²⁵⁷ See: <https://diariodarepublica.pt/dr/detalhe/despacho/5643-2023-213132372>.

²⁵⁸ See <https://diariodarepublica.pt/dr/detalhe/despacho/3821-2024-859718345>.

²⁵⁹ See <https://dre.pt/dre/detalhe/resolucao-conselho-ministros/101-2021-168475294>.

colour, nationality, descent and territory of origin. The document is organised around four transversal principles: deconstruction of stereotypes; coordination, integrated governance and territorialisation; integrated intervention in the fight against inequalities; and intersectionality. These principles cover 10 areas of intervention: governance, information and knowledge; education and culture; higher education; work and employment; housing; health and social action; justice, security and rights; participation and representation; sports; and media and digital.

This National Plan was subject to public consultation and establishes intersectionality as one of its four main principles, but does not define it. Measure 7.3 of this plan, however, establishes the need to revise anti-discrimination legislation, particularly the Criminal Code, in order to better protect against multiple and intersectional discrimination, and the editing of a white book on intersectional discrimination.

According to the Secretary-General of the Presidency of the Council of Ministers (SGPCM), the entity responsible for coordinating and monitoring the implementation of the PNCRD via an online platform used since the plan's inception, the latest available data on overall implementation covers the period from November 2021 to December 2023. These figures show that 21 % of activities were in the implementation phase, while 63 % had either not yet started or had no reported data.²⁶⁰ Since then, no further data has been provided by the Presidency of the Council of Ministers, leaving it unclear whether this is due to a lack of information or a lack of further completed measures. Furthermore, there is no information available regarding the drafting of the new action plan for 2026 onwards.

The 'Plan for the Prevention of Manifestations of Discrimination in the Security Force' is an internal plan that has been in force since 2021.²⁶¹ The plan was prepared by the Inspectorate General of Internal Affairs (IGAI), with participation from the National Republican Guard (GNR), the Public Security Police (PSP) and the Foreigners and Borders Office (SEF). No public consultation was held, and intersectionality was not mentioned in the plan.

The plan defines five strategic intervention areas: recruitment process; training; social networks; image of security forces; prevention and monitoring. In terms of recruitment processes, the plan reinforces communication strategies so that a greater diversity of candidates is recruited, in terms of both gender and ethnic-racial origin. The plan also defines 'good practices in the use of social networks by members of the security forces, related to the prevention of manifestations of discrimination'. Thus, police officers' social network profiles should be monitored to avoid 'hostile statements that incite hatred or discrimination against people or groups', and 'offensive comments, in particular against people, groups, religions, political beliefs, including offensive comments based on gender, sexual orientation, ethnic-racial origin, nationality or country of origin'. The IGAI is central to the implementation of the plan and works alongside the police forces to carry out training and other measures to prevent racism and racial discrimination. The IGAI also assesses complaints and investigates situations where there are suspicions of police misconduct. In the most serious cases, the IGAI carries out investigations and may propose individual sanctions to the relevant minister. Furthermore, the IGAI is responsible for preparing an annual report regarding the enforcement of the plan that encompasses any form of discrimination. In the 2024 FRA report *Addressing Racism in Policing*, the plan is described as 'promising practice'.²⁶² In this connection, the Portuguese Parliament, through

²⁶⁰ See <https://portal.oa.pt/comunicacao/imprensa/2025/1/5/plano-de-combate-ao-racismo-esta-a-um-ano-de-acabar-mas-sofreu-travao-a-fundo/>.

²⁶¹ See <https://portugal.gov.pt/gc22/comunicacao/documentos/plano-de-prevencao-de-manifestacoes-de-discriminacao-nas-forcas-e-servicos-de-seguranca>.

²⁶² Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-addressing-racism-in-policing_en.pdf.

Resolution No. 76/2024,²⁶³ recommended that the Government ensure continuity and allocate specific funds for the implementation and evaluation of the plan.

Furthermore, according to the recent Portuguese Report on the Plan for the Prevention of Manifestations of Discrimination in the Security Forces 2025,²⁶⁴ five disciplinary proceedings were brought against PSP police officers in 2025 for manifesting discriminatory behaviour (racial and other discrimination, including publications on social networks and crimes against cultural identity and personal integrity). Out of the five cases, three were dismissed and another two have not yet been concluded. Also in 2025, 23 complaints were registered alleging possible discriminatory conduct by GNR officers, which led to the opening of internal investigation proceedings that are still at the inquiry stage. The GNR also made reference to situations of discrimination against members of the Guard in 2025, highlighting that there was an increase in the number of officers who were victims of crime while on duty, with 146 hospitalised due to bodily harm.

In March 2023, a guide to preventing and addressing racial discrimination in schools was published in Portugal.²⁶⁵ It was produced with contribution from teachers, technical staff and representatives of different migrant and ethnic communities, as well as from students of different education cycles via the ComParte project (sponsored by the Maria Rosa Foundation). The guide was prepared by the Commission for Equality and Against Racial Discrimination (CEARD) and the High Commission for Migrations (HCM), in collaboration with the Directorate-General of Education (DGE). The aim in its creation is to provide support to schools in defining strategies and identifying practices for the prevention and combating of racial discrimination in various spaces and moments of school life. It also acknowledges schools and their staff as true and capable agents of social change. In addition, the publication includes recommendations on actions to take in classrooms, on a school curriculum approach that is more attentive to the fight against racism, on how to ask for help in relation to acts of racism and discrimination, and on the corresponding penalties laid out by law. The publication of this guide is part of Portugal's National Plan to Combat Racism and Discrimination 2021-2025.

The National Roma Communities Integration Strategy 2013-2020 was approved for the first time by the Resolution of the Council of Ministers No. 25/2013 of 17 April 2013²⁶⁶ and aligned with the Communication from the European Commission 'A European framework for national Roma integration strategies up to 2020' from 5 April 2011. The monitoring process proved to be decisive in the need to introduce changes, and in the definition of the Strategy, especially in relation to the clarification and operationalisation of measures, as well as in the determination of priority areas of intervention, namely equality between women and men, knowledge about Roma people and their participation in the implementation of ENICC. The Government then decided to proceed with the review of ENICC (based on a wide consultation of various actors, namely with local authorities and other local public services and with civil society entities, at national and local level) through the resolution 154/2018 of 8 November 2018²⁶⁷ – with an extended term until 2022.

²⁶³ Resolution No. 76/2024, *Diário da República*, série I, 7 October 2024, available at: <https://data.dre.pt/eli/resolassrep/76/2024/10/07/p/dre/pt/html>.

²⁶⁴ Report published on 17 April 2026, after the cut-off date of this report, available at: <https://www.psp.pt/Documents/IGAI/Relat%C3%B3rio%20de%20Monitoriza%C3%A7%C3%A3o%20do%20Plano%20de%20Preven%C3%A7%C3%A3o%20de%20Manifesta%C3%A7%C3%B5es%20de%20Discrimina%C3%A7%C3%A3o%20nas%20For%C3%A7as%20de%20Seguran%C3%A7a%20em%202025.pdf>.

²⁶⁵ Available at: <https://www.acm.gov.pt/documents/10181/233158/Guia-para-a-Preven%C3%A7%C3%A3o-e-Combate-%C3%A0-Discrimina%C3%A7%C3%A3o-Racial-nas-Escolas-2022.pdf/9b20c922-6214-4be1-91c5-7ed9b4141cfe>.

²⁶⁶ Resolution 25/2013 of 17 April 2013, *Diário da República*, série I-A, of 17 April 2013 – available at: <https://data.dre.pt/eli/resolconsmin/25/2013/04/17/p/dre/pt/html>.

²⁶⁷ Resolution 154/2018, 8 November 2018, *Diário da República*, série I-A, No. 230, 29 November 2018 – available at: <https://dre.tretas.org/dre/3539638/resolucao-do-conselho-de-ministros-154-2018-de-29-de-novembro>.

In 2023, this National Strategy was subject to an external evaluation. The aim of the external evaluation was to find out to what extent the provisions of the National Strategy have been effectively implemented by the end of 2022; to find out what had changed consistently, what had changed incipiently and what problems persisted; to find out what problems had been encountered in the implementation of measures and to list possible solutions; to understand to what extent the implementation of the strategy had contributed to the empowerment of Roma people; and to propose a new strategy. While the external evaluation was not concluded, the then Portuguese Government decided to extend the strategy until 31 December 2023 (Resolution 36/2023 of 20 April 2023²⁶⁸), but no similar extension occurred for 2024²⁶⁹.

In 2024, the new Portuguese Government decided to suspend the work of the external evaluation.

In March 2025, a formal challenge was addressed to the Prime Minister through an open letter concerning the delay in approving the National Strategy for the Integration of Roma Communities (ENICC) 2022-2030. The document warns that Portugal is the only European Union Member State that has yet to adopt the new strategy, representing a cumulative delay of approximately three years in its implementation.²⁷⁰

Disability

In April 2021 the Portuguese Government approved the National Strategy for the Inclusion of Persons with Disabilities (2021-2025), which included a public consultation process between 10 November and 24 December 2020.²⁷¹ The strategy reflects the obligations of the United Nations Convention on the Rights of Persons with Disabilities and should allow for the launch of a set of measures, such as: the reformulation of the current regulatory framework whenever necessary; the reformulation of the disability assessment and certification system; a comprehensive diagnosis of persons with disabilities through the development of systems for data collection and for monitoring indicators to support decision-making; interventions in public spaces to facilitate access for persons with disabilities; the adjustment of the training, employment and qualification systems for persons with disabilities; the development of innovative social services and community-based approaches; the participation of persons with disabilities in sport, culture and leisure activities; and the extension of the Support Model for Independent Living (MAVI), which provides personal assistance to persons with disabilities. The strategy adopts an intersectional approach: 'it takes into account the multiplicity of conditions that contribute to inequality and discrimination against persons with disabilities, as a complex and dynamic phenomenon that puts people at a greater disadvantage when they are victims of multiple discrimination, namely on the grounds of gender, sexual orientation, nationality, origin and age'. In December 2025, the Government extended the validity of the National Strategy for the Inclusion of Persons with Disabilities 2021–2025 until the entry into force of the Strategy for the Rights of Persons with Disabilities 2026–2030.²⁷²

Furthermore, it is worth noting that, after public consultation, the Council of Ministers has recently approved the New National Strategy for the Integration of People Experiencing Homelessness 2025-2030 and the respective Action Plan for the years 2025-2026, in line

²⁶⁸ Resolution 36/2023, 20 April 2023, *Diário da República*, série I, 3 May 2023 – available at: <https://files.dre.pt/1s/2023/05/08500/0000200002.pdf>

²⁶⁹ See <https://www.publico.pt/2024/11/14/sociedade/noticia/governo-fez-marcha-atras-proposta-estrategia-integracao-comunidades-ciganas-2111841>.

²⁷⁰ See <https://www.publico.pt/2025/03/25/sociedade/noticia/comunidade-cigana-respostas-nova-estrategia-integracao-2127286>.

²⁷¹ Council of Ministers, Resolution 119/2021, 22 July 2021, *Diário da República*, série I, 31 August 2021, available at: <https://diariodarepublica.pt/dr/detalhe/resolucao-conselho-ministros/119-2021-170514954>.

²⁷² Ordinance 467/2025/1, 23 December 2023, *Diário da República*, série 1, No. 246, available at: <https://www.inr.pt/documents/11309/596500/DR+1.%C2%AA+S%C3%A9rie+n%C2%BA+246%2C+de+23+12+2025/2aa9bbbc-578a-46e1-a13e-e412790ce9f9>.

with the National Strategy for Equality and Non-Discrimination 2018-2030 (Resolution 208/2024 of 30 December²⁷³). In 2017, the Portuguese Government adopted the National Strategy for the Integration of People Experiencing Homelessness (ENIPSSA) 2017-2023. ENIPSSA 2017-2023 (Resolution No. 107/2017 of 25 July), which aimed to consolidate a strategic and holistic approach to prevention and intervention, focused on people experiencing homelessness. This strategy was amended in 2020 by Council of Ministers Resolution 2/2020 of 21 January 2020, specifically its governance model, with a view to closer monitoring. An external evaluation of ENIPSSA 2017-2023 made a number of recommendations, including technical and financial consolidation to enhance the fulfilment of the strategy's objectives. Within this framework, the new strategy, adopted by Resolution 208/2024, aims to introduce a series of improvements over previous programme cycles, in particular to ensure specialised intervention with especially vulnerable groups such as the elderly, people in situations of dependency, people with disabilities, people in need of mental health care, people with alcohol and/or illicit substance use and dependency, LGBTI+ people, the Roma people and the migrant population, among others. As for the principles that cut across the strategy, the resolution highlights the promotion of non-discrimination and equality, particularly through safeguarding gender identity and combating discrimination based on sexual orientation, gender identity and expression, and sexual characteristics. It also highlights the need to recognise and adapt the strategy to the specificities and heterogeneity of the various groups that make up people at risk or experiencing homelessness according to factors such as gender, sex, disability and vulnerability. No mention is made, however, of intersectionality.

²⁷³ Council of Ministers Resolution 208/2024 of 30 December 2024, *Diário da República*, Série I, 30 December 2024, available at: <https://data.dre.pt/eli/resolconsmin/208/2024/12/30/p/dre/pt/html>.

10. CURRENT BEST PRACTICES

Regarding the potential for artificial intelligence and algorithms to lead to discrimination and alongside Law 27/2021 of 17 May 2021, which approves the Portuguese Charter of Human Rights in the Digital Era, the Resolution of the Council of Ministers 131/2021 of 10 September 2021 approved the *Digital Transformation Strategy for the Public Administration 2021-2026* and consequent Transversal Action Plan, in alignment with the execution calendar for the Recovery and Resilience Plan (PRR), which, in the second strategic line on data valorisation, requires that data have the necessary quality in order not to create, exclude or discriminate against fringes of the population.

Despite no concrete issues of concern have been identified regarding the use of artificial intelligence in relation to the implementation of national legislation transposing the directives, the fear that this may happen (and the desire that it should be avoided) has been followed by a number of measures. A Guide for an Ethical, Transparent and Responsible Artificial Intelligence in Public Administration was adopted in 2022.²⁷⁴

Also, according to Article 24(3) and 106 of the Labour Code (amended by Law 13/2023 of 3 April 2023), legal rules on equality and non-discrimination are now applicable to decision-making based on algorithms or other artificial intelligence systems.

Regarding education, on 20 March 2023, a guide to preventing and addressing racial discrimination in schools was published in Portugal.²⁷⁵ It was produced with contribution from teachers, technical staff and representatives of different migrant and ethnic communities, as well as from students of different education cycles via the ComParte project (sponsored by the Maria Rosa Foundation). Moreover, the 'Guide on the Right to be Oneself in Schools'²⁷⁶ provides guidance on preventing and combating discrimination and violence against LGBTI students in the school setting. Such guides can be considered a promising practice according to the *ECRI Report on Portugal* for 2025.²⁷⁷ A number of activities implemented by civil society organisations in schools were considered as good practices, such as the Project on LGBTI Education by the NGO Rede Ex Aequo, the training sessions on anti-racist education provided by Grupo EducAR²⁷⁸ and the measures taken in schools concerning Portuguese as a second language.

The Authority for the Prevention of and Combat Against Sport-Related Violence (APCVD) has the power to investigate and sanction acts that incite discrimination and hatred against a person or group of persons, on several grounds, in the context of a sports event. Since its creation, in 2018, the APCVD has recorded 110 situations of racism and xenophobia in sports, 39 of which were forwarded to the Public Prosecutor's Office due to evidence of a crime, while 71 gave rise to administrative proceedings, which can include a prohibition against attending sports events. APCVD is required to maintain a record of the administrative proceedings, which includes, as a minimum, the identity of the convicted person (whether a legal or natural person); information on the type of administrative offence; and the nature of the sanctions applied, in order to raise awareness among the public of matters of equality, non-discrimination and violence prevention.²⁷⁹ The work of the APCVD can also be considered as a good practice according to ECRI.

²⁷⁴ Available at: <https://bo.tic.gov.pt/api/assets/etic/d44b2322-3dd1-4b21-a32e-cbc0b9e67955/>.

²⁷⁵ Available at: <https://www.acm.gov.pt/documents/10181/233158/Guia-para-a-Preven%C3%A7%C3%A3o-e-Combate-%C3%A0-Discrimina%C3%A7%C3%A3o-Racial-nas-Escolas-2022.pdf/9b20c922-6214-4be1-91c5-7ed9b4141cfe>.

²⁷⁶ See <https://www.cig.gov.pt/2023/06/cig-e-dqe-lancam-guia-o-direito-a-ser-nas-escolas-orientacoes-para-a-prevencao-e-combate-a-discriminacao-e-violencia-em-razao-da-orientacao-sexual-identidade-de-genero-expressao-de-genero/>.

²⁷⁷ See <https://rm.coe.int/sixth-report-on-portugal/1680b6668d> -

²⁷⁸ Rede Ex Aequo, Projecto Educação LGBTI, supported by the Portuguese Institute of Sport and Youth (IPDJ), CIG and Portugal 2020; Grupo EducAR, Plataforma de Educadores Antirracistas.

²⁷⁹ These records are available at: <https://www.apcvd.gov.pt/publicacao-de-sancoes/>.

The 'Plan for the Prevention of Manifestations of Discrimination in the Security Force' that covers all discrimination grounds, an internal plan that has been in force since 2021, has been recognised by the Fundamental Rights Agency as a promising practice in its Report Addressing Racism in Policing.²⁸⁰ Furthermore, the Public Security Force adopted Resolution No. 02/INSP/2020, which reinforces the obligation to communicate any actions and behaviours that could be considered discriminatory to the disciplinary services. This may contribute to developing a culture of zero tolerance for racism and intolerance within the PSP and can be considered a good practice, according to the 2025 *ECRI Report on Portugal*.

In addition to providing legal, psychological and other support to victims of hate speech, the Portuguese Association for Victim Support (APAV) gathers data on hate speech online through various reporting channels. Furthermore, the APAV manages the Safer Internet Helpline, which is aimed at supporting victims of cybercrime and online violence. The APAV also coordinates a hotline to which illegal content, including incitement to discrimination and violence, can be reported. These initiatives assist hate speech victims with requests to digital platforms to block and remove illegal content, and they can signpost them to competent national authorities such as the Portuguese Criminal Investigation Police.

Through Resolution 208/2024 of 30 December,²⁸¹ the Council of Ministers approved the New National Strategy for the Integration of People Experiencing Homelessness 2025-2030 and the respective Action Plan for the years 2025-2026, in line with the National Strategy for Equality and Non-Discrimination 2018-2030.

The changes in criminal law introduced by Law 4/2024 of 15 January 2024 and Law 15/2024 of 29 January 2024 demonstrate that the Portuguese legislator is concerned with the increase in discrimination phenomena and has committed to a harsher criminal policy on this behalf.

A recent decision of the Administrative and Fiscal Court of Leiria, of 7 November 2024 (proc.190/19.9BELRA), has shown that *actio popularis* can effectively and successfully be used by associations in cases of non-discrimination.

The decision to transform CEARD into an independent body in 2024 has been welcomed, but this will need to be evaluated in light of the concrete resources allocated to CEARD over the coming years.

²⁸⁰ Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-addressing-racism-in-policing_en.pdf, p. 27.

²⁸¹ Council of Ministers Resolution 208/2024 of 30 December 2024, *Diário da República*, Série I, 30 December 2024, available at: <https://data.dre.pt/eli/resolconsmin/208/2024/12/30/p/dre/pt/html>.

11. SENSITIVE OR CONTROVERSIAL ISSUES²⁸²

11.1 Potential breaches of the directives at the national level

Government and Parliament have been making efforts to improve the compliance of Portuguese legislation with the directives. However, there have been no known efforts to implement Directive 2024/1499.

Portuguese legislation complies with the directives and sometimes goes beyond their scope.

However, there seem to be potential breaches in relation to the organisational structure of the Portuguese equality bodies, given that:

- There should be a clear and explicit designation of CEARD as an equality body under Council Directive 2000/43/EC. So far, Law 3/2024 of 15 January 2024 has only established CEARD as an independent administrative authority, with authority powers, which functions adjacently to the Portuguese Parliament, but the Law does not completely clarify its status as an equality body. Although the authors infer from its composition and powers that the CEARD is the 'designated' equality body under Council Directive 2000/43/EC of 29 June 2000, the fact that it is not explicitly considered as such by law may be the reason why it does not figure yet in the Equinet list of equality bodies;²⁸³
- There is uncertainty about the operational activities of CEARD, which is paralysed, having not conducted any sanctioning procedures during the whole of 2024 and 2025, which might lead to the sanctions established in Law 93/2017 not being effective and dissuasive (thus going against Article 15 of the above-mentioned Directive).
- There is no explicitly designated equality body responsible for equal treatment in matters of employment and occupation between persons irrespective of their racial or ethnic origin, which constitutes, at the cut-off date of this Report, a potential breach of Article 13 of Council Directive 2000/43/EC.

11.2 Other issues of concern

Other key issues of concern with regard to the implementation and practical application of the anti-discrimination directives at national level are:

- Age is an area in which it seems that the Portuguese legislator and the courts have not paid much attention to the CJEU case law that has brought the issue of age discrimination to light²⁸⁴. In legislative terms, any explicit reference to age is absent from most of the anti-discrimination clauses in Portuguese law. The justification test used in courts in age discrimination cases continues to equate to a mere reasonableness test, and does not therefore fulfil the need to control potentially discriminatory measures according to a structured analysis of legitimacy and proportionality.
- The difference between the written law and its practical effect. In Portugal, it is rather common to approve legislation that would be completely appropriate to achieve certain goals, but which, due to the country's financial and economic weakness, for instance, does not function properly. This applies in particular to the implementation of social rights. Nevertheless, in the past few years, there has been a considerable effort to render non-discrimination rights effective in both the public and private spheres.

²⁸² The assessments and views expressed in both sections 11.1 and 11.2 reflect the author's opinion.

²⁸³ See: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/who-we-work-gender-equality/national-gender-equality-bodies_en.

²⁸⁴ CJEU, *Palacios de la Villa*, Case C-411/05 (ECLI:EU:C:2007:604) and *Hörnfeldt v. Posten Meddelande AB*, Case C-141/11 (ECLI:EU:C:2012:421).

- There are still barriers to access to justice that need to be overcome. The length of the procedures and the costs involved are two disincentives to accessing justice. Attempts should be made to turn the situation around – for instance, by involving NGOs and other associations in discrimination procedures and by resorting to more expeditious and equitable mechanisms such as mediation.
- There is a complex architecture of national equality bodies, and it is not clear which, besides ACT, are responsible for equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, age or sexual orientation.²⁸⁵
- Given the existence of several equality bodies in Portugal, it is harder to ascertain if multiple discrimination has taken place in a concrete situation (that involves several equality bodies mandates, for instance ethnic origin, gender and disability). This might prevent the adequate consideration and sanctioning of these conducts and also prevent effective access to justice.
- There is a profusion of equality plans in Portugal. Those plans are communicated through online dissemination (in official websites and social networks). They are nonetheless very hard to find, since there is no coordination (a single site) where such information is available, a situation that should be changed.
- The fact that the designation, mandates and institutional framework of the equality bodies in Portugal have changed rapidly over the years, now with the creation of AIMA, superseding HCM, and with the reconfiguration of CEARD, has contributed to the lack of stability and general knowledge in respect of these bodies' existence and functions.
- Having a double mandate, both in border control and racial equality – two difficult reconcilable areas – and with more resources allocated to the former than the latter, only the course of time will tell if AIMA will be able to perform its functions in the non-discrimination area effectively, especially regarding Roma communities.
- As from 2024, with the adoption of Law 3/2024, CEARD has had the competence to provide independent assistance to victims of discrimination on the basis of racial and ethnic origin, colour, nationality, ancestry and territory of origin, including by providing victims of discrimination with information necessary for the defence of their rights (Article 4(2)(g)). However, this article does not mention other litigation measures as defined in Article 10 of Directive (EU) 2024/1499, such as 'The right of the equality body to act in court proceedings [including] the right to submit observations to the court, in accordance with national law and practice' or any of the measures identified in Article 10(3). Therefore, CEARD's competences under Law 3/2024 do not yet reach the standards set by Directive (EU) 2024/1499. Despite the fact that the transposition period for this Directive has not elapsed, it would have been adequate to establish the 'new' CEARD in light of the proposal of the Directive, which was well known by then. Indeed, the CEARD as it stands now is not only operationally weak but also legally fragile, since its status as a designated equality body is not explicitly established by law and the competences attributed to it are below the best standards in the field of equality and non-discrimination.
- There is no comprehensive registry of discriminatory sanctions imposed, and there is a lack of knowledge about their effective and dissuasive effect.

²⁸⁵ Regarding disability, the INR (National Institute for Rehabilitation) has competences in the non-discrimination area.

12. LATEST DEVELOPMENTS IN 2025

12.1 Legislative amendments

Despite some general legislative changes, no relevant legislation on non-discrimination has been adopted or modified in 2025.

12.2 Case law

There is one relevant piece of case law in 2025 related to the grounds covered by this report, namely racial or ethnic origin.

Relevant discrimination grounds: racial or ethnic origin

Name of the court: Judicial Court of Lisbon

Date of decision: 22 December 2025

Name of the parties:

Reference number: proc. 27699/25.2T8LSB

Link: Access to the decision was given to the authors upon request. However, the Decision is not publicly available.

Brief summary:

A group of six Roma filed a lawsuit against André Ventura, the leader of Chega (a far-right political party) due to the placement of posters by the defendant with the words 'Gypsies must comply with the law', accompanied by a photograph of the defendant and the inscription 'André Ventura, Presidential Elections 2026'. The message on the posters was disseminated throughout the country via the media and social networks, and the claimants view that message as stigmatising and humiliating, since the accusation is made in a generalised manner to all Roma communities indiscriminately.

The Court balanced the rights to a good name, honour and reputation against the freedom of expression and had recourse to several international instruments, in particular the European Convention on Human Rights, and considered that the implicit but unequivocal message behind the posters was of a discriminatory nature and that the restriction to freedom of expression was justified by an imperative social need. The judge explained that 'the phrase used by the Defendant to express his thoughts is serious: i) because it was reflective (it was not uttered in the heat of a political debate), and ii) because it was designed to cause a specific social impact on a social group (an impact that is negative because it discriminates against an ethnic group)' and added that 'the medium used by the Defendant (*billboard/poster placed on a public road*) is not innocent. The Defendant knows that he placed the posters in various locations on public roads and that they will be read, in the sense he intended, by countless people (as he admitted in court, he placed the posters in areas of greatest impact and electoral visibility)', which indeed reinforced stereotypes and increased intolerance, segregation, discrimination and hatred. The fact that the defendant was a public figure was also taken into consideration when the Court determined that the posters should be removed within 24 hours and that EUR 2 500 per poster per day should be paid in the event of non-compliance with the judicial decision.²⁸⁶

²⁸⁶ Half of the amount is paid with respect to the claimant and the remaining half goes to the state, pursuant to Article 829-A(3) of the Civil Code.

ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS**Country: Portugal****Date: 1 January 2026**

Instrument	Date of signature	Date of ratification	Derogation s/ reservation s relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals ?
European Convention on Human Rights (ECHR)	22.09.1976	09.11.1978	Articles 5 and 7	Yes	Yes
Protocol 12, ECHR	04.11.2000	25.11.2016	No, derogations/ reservations	Yes	Yes
Revised European Social Charter	03.05.1996	30.05.2002	No	Ratified collective complaints protocol? Yes	Yes
International Covenant on Civil and Political Rights	07.10.1976	31.07.1978	No	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	07.05.2002	No	N/A	No
International Covenant on Economic, Social and Cultural Rights	07.10.1976	31.07.1978	No	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination	29.04.1982	24.08.1982	No	No	Yes
ILO Convention No. 111 on Discrimination	15.06.1958	19.11.1959	No	No	Yes

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	26.11.1990	21.09.1990	No	Yes	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	23.09.2009	No	No	Yes

GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: https://europa.eu/european-union/contact_en.

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service: – by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls), – at the following standard number: +32 22999696, or – by email via: https://europa.eu/european-union/contact_en.

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en.

EU publications

You can download or order free and priced EU publications from: <https://publications.europa.eu/en/publications>. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents

For access to legal information from the EU, including all EU law since 1951 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>.

Open data from the EU

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

