

## Startside&gt;Domstolsprocedurer&gt;Civilretlige sager&gt;Hvilket lands domstol er ansvarlig?

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## Which country's court is responsible?

Portugal

A new law on the Portuguese judiciary system entered into force on the 1st of September 2014. Therefore, the information contained below is partially out-of-date. We are currently working on the new version of the content. Apologies for any inconvenience caused.

**1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?**

In the Portuguese judicial system, whether you should apply to an ordinary civil court or to a specialised court depends on the type of case to be brought. Jurisdiction is set at the time when a case is brought to court, with any later changes in facts being irrelevant in this regard.

In Portugal, jurisdiction is divided among the different courts according to the matter in question (i.e. the nature of the dispute), hierarchy (the levels of jurisdiction of the courts – first instance, second instance and the Supreme Court of Justice), the amount in question (the monetary value of the economic benefit being sought), the applicable types of procedure (i.e. the specific chain of procedural steps to be taken to assert a certain right) and territory (i.e. the geographical area to which the facts to be considered should be connected).

There are special provisions related to enforcement actions (those measures which a party requests to be taken for the effective reparation of its violated right).

With regard to jurisdiction *ratione materiae*, courts can hear cases which are not attributed by law to other types of court.

There is a hierarchical ranking of courts for the purpose of hearing appeals against court decisions.

As a rule, the Supreme Court of Justice hears appeals in cases where the amounts at stake exceed the limit which can be dealt with in the courts of appeal. The latter hear appeals in cases where the amounts involved exceed the limit which can be dealt with in the courts of first instance.

These limits are financial amounts defined by law, to be compared with the amount involved in the case. The limits determine the ability to appeal granted to the parties and set the terms within which a court can reach a decision which cannot be appealed against.

The rules of civil procedure determine the court in which the case should be brought, depending on the amount involved.

The same rules indicate the criteria to be applied in order to establish in each case which court has territorial jurisdiction.

The courts of first instance are, as a general rule, district courts. These courts have general jurisdiction, that is, they can resolve all disputes except for those which are reserved by law for hearing by other courts.

For further clarification of this point please consult the factsheet on the organisation of justice in Portugal on this website.

**2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?**

Once you have established that you should take your case to an ordinary civil court, the criteria set out in the following questions should be used to identify the specific court where your application should be made.

**2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?**

In Portugal there is no distinction between lower and higher courts of first instance.

**2.2 Territorial jurisdiction (is the court of city/town A or of city/town B competent for my case?)****2.2.1 The basic rule of territorial jurisdiction**

The basic rule regarding territorial jurisdiction is that the court with jurisdiction over the case is that of the place where the defendant lives.

If, however, the defendant does not have a habitual residence, his residence is unknown or he is absent, the case will be brought in the court of the place where the plaintiff lives. If the defendant's domicile and residence are in a foreign country, the case will be brought in the court of the area where the defendant is present. If the defendant is not in Portugal, the case will be brought in the court of the place where the plaintiff lives. When this latter domicile is in a foreign country, the Lisbon court will have jurisdiction for the case.

In relation to legal persons and companies, the general rule is as follows:

- a) If the defendant is the State, the court of the defendant's domicile is replaced by the court of the plaintiff's domicile,
- b) If the defendant is another legal person or a company, the case will be brought in the court of the area of the defendant's main registered address or that of the branch office, agency, subsidiary, delegation or representative, depending on whether the case is brought against the main company or the latter entities. However, cases brought against foreign legal persons or companies which have a branch, agency, subsidiary, delegation or representative in Portugal can be lodged in courts in the areas where these have their registered addresses even though the case is being brought against the main company.

**2.2.2 Exceptions to the basic rule**

Cases involving rights to immovable property, the division of jointly owned property, eviction, right of preemption, and foreclosure, as well as those cases involving reinforcement, substitution, reduction or release of mortgages should be put to the court for the area where the property in question is located.

Cases for the reinforcement, substitution, reduction or release of mortgages on ships or aircraft will, however, be brought in the court for the area in which the item in question is registered. If the mortgage covers moveable assets registered in several districts the plaintiff can opt for any of these.

When the object of the case is a group of moveable items belonging to the same person and intended for a single use, or movable and immovable assets, or real estate assets situated in different districts, the case in question will be brought in the court in the district where the most valuable immovables are located. For this purpose the land register values will be used. If the immovable asset which is the object of the case is located in more than one district, the case can be brought in any of those districts.

Cases for demanding the fulfilment of obligations, compensation for non-fulfilment or incomplete fulfilment of obligations and the termination of a contract due to non-fulfilment will be brought at the defendant's domicile, although the creditor may opt for the court at the place where the obligation should have been fulfilled, when the defendant is a legal person, or when the domicile of the creditor is located in the metropolitan areas of Lisbon or Porto and the defendant is domiciled in the same metropolitan area.

For civil liability cases based on illegal acts or hazards, the court with jurisdiction is that of the area in which the act occurred.

The court with jurisdiction over divorce cases or cases for legal separation and division of property is that of the area of domicile or residence of the plaintiff.

For probate (to end community of property after a person's death) the court with jurisdiction is that of the area of the final place of domicile of the deceased.

The court of the port where a ship's cargo, which has been declared under general average rules, was or should have been delivered has jurisdiction to decide on this damage.

A case involving losses and damages resulting from a collision of ships can be brought in the court of the area where the accident occurred, the court of the domicile of the owner of the ship which struck the other, the court for the place where this ship is registered or in which it is located, or the court for the first port of call of the ship which was struck.

The salaries owed for salvaging or assisting ships can be demanded in the court of the place where the fact occurred, the court of the area of domicile of the owners of the salvaged objects or the court for the place where the salvaged ship is registered or is to be found.

A case in which an acquired ship is to be declared as being free of any privileges will be brought in the court of the port where the ship is moored at the time of the acquisition.

For company special recovery or bankruptcy proceedings the court with jurisdiction is that of the area of the debtor or testator on the date of death, depending on the cases. Equally competent is the court in the location in which the debtor has his main interests centred, which is understood to be that place in which he administers those interests in a habitual manner and recognised as such by third parties.

With regard to protective measures (set in motion by procedural steps aimed at safeguarding the effectiveness of a decision to be taken in a particular case) and steps taken before a case is brought, the following points should be noted:

- a) The seizure (legal apprehension of goods) and impounding of goods (consisting of listing, valuing and delivering the goods to a depository) can either be requested at the court in which the main proceedings are to be brought or in the court of the district in which the goods are located or, if the goods are located in several districts, in any of the respective courts;
- b) For the embargoing of new work (an urgent measure aimed at suspending new work) the court with jurisdiction is that of the district in which the work is being carried out;
- c) For other restraining measures the court with jurisdiction is that in which the respective case is to be brought;
- d) The steps taken before a case for producing proof are requested in the court of the district in which the steps are to be made.

Notifications to be served are requested in the court of the district in which the person to be notified resides.

With regard to cases to be brought in labour courts, the general rule is that these should be brought in the court of the place where the defendant lives.

However, cases involving employment contracts brought by a worker against his employer can be lodged in the court for the area where the work in question is carried out or for the area in which the worker has his domicile. If the work in question is carried out in more than one location, the cases can be put to the court of any of the respective areas. If there are several plaintiffs, the court with jurisdiction is that for the area where the work in question is carried out or for the area in which any of the plaintiffs has their domicile.

Cases resulting from work accidents and occupational disease should be brought in the court for the area in which the accident occurred or in which the sick person worked for the last time on the duty which is suspected of having led to the illness.

If the accident occurs abroad the case should be brought in Portugal, in the court for the area in which the person who suffered the accident has his domicile.

The court for the area of domicile of the person who suffered the accident, the sick person or the beneficiary also has jurisdiction if the person in question requests it before the contentious phase of the case or if the report is presented there. If there are several beneficiaries, the court with jurisdiction is that for the area in which the greatest number of applicants live or, if equal numbers live in different areas, the area in which the first person to make an application lives.

If the person who suffered the accident, the sick person or the beneficiary is registered as a seaman or aircraft crew member and the accident takes place during a journey or the disease is found during a journey, the court of the first place on national territory reached by the ship or aircraft or the place where the ship or aircraft is registered also has jurisdiction for the case in question.

In the case of collective dismissal, the protective suspension measures and objections must be brought in the court for the area in which the establishment where the work is done is located.

If the collective dismissal affects workers in several establishments, the court with jurisdiction is that for the area in which the establishment with the largest number of dismissed workers is located.

With regard to minors and in civil proceedings, the general rule is that the court which has jurisdiction to issue orders is that of the area in which the minor resides at the time the case is brought to court. If the minor's place of residence is unknown, the court with jurisdiction is that of the area of residence of the minor's guardians. If the guardians have different places of residence, the court with jurisdiction is that of the area in which the guardian to whom the minor is entrusted resides or, in the case of joint guardianship, that of the guardian with whom the minor resides. If any of the orders concern two or more minors, children of the same parents and resident in different areas, the court with jurisdiction is that for the area in which most of them live. If jurisdiction cannot be attributed in this way, the court with jurisdiction is that in which the order was first requested. If, at the time the case is brought to court, the minor does not reside in Portugal, the court with jurisdiction is that of the place of residence of the applicant or the defendant; when both these parties also reside abroad and the Portuguese court has international jurisdiction, the case should be brought in a Lisbon court.

#### **2.2.2.1 When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?**

This question is answered in point 4.

#### **2.2.2.2 When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?**

In all situations set out in 'exceptions to the rule' in point 4.

#### **2.2.2.3 Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?**

Yes, by signing a private agreement for the assignment of jurisdiction the parties can agree which court has jurisdiction to resolve a particular dispute or the disputes which may arise from a particular legal relationship, provided that this has connections with more than one legal system.

The agreed designation may involve attributing exclusive jurisdiction to certain courts or may just be an alternative to the jurisdiction of Portuguese courts, to be used in the event of doubt where such an alternative exists.

The choice of jurisdiction is valid only when all the following conditions are met:

The dispute involves rights which can be freely determined by the parties;

The attribution is accepted by the law of the designated court;

The choice is justified by a reason which is important either for both parties or for one of them, as long as this does not entail a serious inconvenience for the other party;

The case does not relate to a matter within the exclusive jurisdiction of the Portuguese courts;

The choice is the result of a written agreement or an agreement confirmed in writing, which must expressly mention the court to which jurisdiction is attributed. In this regard, a written agreement is considered to be any document signed by the parties or resulting from the exchange of letters, telexes, telegrams or other types of communication which leave written proof, whether these instruments actually contain the agreement or contain a clause referring to another document containing the agreement.

In labour law, agreements or clauses for the exclusion of territorial jurisdiction assigned in the terms referred to in the reply to question 4 are null and void.

### **3 Where specialised courts have jurisdiction how can I find out which one I have to address?**

The identification of the court to be approached can be made on the basis of the following criteria:

**Family and juvenile courts** – these are competent to prepare and decide on voluntary jurisdiction cases involving spouses, cases for legal separation and division of property and divorce cases, probate and protective measures related to these, alimony cases and alimony enforcement cases between spouses and ex-spouses, cases for the declaration of non-existence or annulment of marriage, and cases involving the annulment of marriage made in good faith by both spouses.

#### **Family and juvenile courts can also:**

- a) Assign the custody and administration of assets;
- b) Appoint a person to act in the name of a minor and appoint a general custodian to represent a minor subject to parental authority in extra-judicial matters;
- c) Grant adoption;
- d) Decide on the exercise of parental responsibility and hear questions involving this;
- e) Set maintenance payments due to minors and adult or emancipated children and prepare and decide on the enforcement of maintenance payments;
- f) Enforce rights of access to minors;
- g) Authorise the legal representative of minors to carry out certain acts, ratify those acts which may have been carried out without authorisation and take measures regarding the acceptance of donations;
- h) Take decisions regarding the bond which parents should provide in favour of minor children;
- i) Decree the total or partial prohibition of parental authority and place limits on the exercise thereof;
- j) Decide, if there is disagreement among the parents, on the first name and surname of the minor.

#### **Family and juvenile courts are also responsible for the following:**

- a) When there is custody or administration of assets, the court determines the remuneration of the custodian or administrator, has jurisdiction over the withdrawal, release or removal of the custodian, administrator or member of the family council, demands and assesses accounts, authorises the substitution of the legal mortgage and determines the strengthening and substitution of the bond provided and appoints a special custodian to represent the minor in extra-judicial matters;
- b) Appointing a special custodian to represent the minor in any custody case;
- c) Converting, revoking and reviewing adoption, demanding and assessing the accounts of the adopting party and fixing the amounts of income necessary for supporting the adopted party;
- d) Deciding on the strengthening and substitution of the bond provided in favour of minor children;
- e) Demanding and assessing the accounts which the parents should provide;
- f) Dealing with any other developments in the cases referred to in the previous point.

#### **These courts also have competence to order measures relating to minors who have reached 12 years of age but are under 16, if they fall within any of the following situations:**

- a) They show serious difficulty in adapting to a normal social life, due to their situation, behaviour or tendencies they have shown;
- b) They are involved in begging, vagrancy, prostitution, licentious behaviour, alcohol abuse or use of illicit drugs;
- c) They have been accused of any fact considered by criminal law as a crime, misdemeanour or infringement.

**The competence of family and juvenile courts also covers minors less than 12 years old when their parents or legal representative do not accept custody or re-educational orders from non-judicial official or registered institutions. Without prejudice to cases in which by law competence falls to the abovementioned institutions, regardless of age, these courts are also competent to:**

- a) Order measures relating to minors who are victims of ill treatment, abandonment or left without support or who are in a situation liable to endanger their health, safety, education or morality;
  - b) Order measures relating to minors who, having reached 14 years of age, demonstrate that they are incapable of following the discipline imposed by the family, work or the educational and welfare establishment they attend;
  - c) Order measures relating to minors who are involved in begging, vagrancy, prostitution, licentious behaviour, alcohol abuse or use of drugs, when such activities do not constitute or are not related to criminal offences;
  - d) Analyse and decide upon requests to protect minors against abusive authority in the family or in the institutions they are entrusted to.
- When, during compliance with a measure, a minor who is more than 16 years old commits any criminal offence, the court may have jurisdiction, for the purposes of reviewing the measure being implemented, if the personality of the minor and the less serious circumstances of the fact so advise.
- The court's competence ceases when cases appear before it after the minor has reached 18 years of age. Such cases are closed accordingly.

#### **Labour Courts – The labour courts have jurisdiction for the following civil matters:**

- a) Matters related to the annulment and interpretation of non-administrative instruments for the collective regulation of working conditions;
- b) Matters resulting from employer-employee relations and relations established with a view to the conclusion of employment contracts;
- c) Matters resulting from work accidents and occupational diseases;
- d) Matters regarding nursing, hospital cases, the supply of medicines during the provision of clinical services, prostheses and orthopaedic devices or any other services carried out or paid for in order to benefit the victims of work accidents or occupational diseases;
- e) Cases brought to annul acts and contracts signed by any responsible bodies with the purpose of evading obligations resulting from the application of trade union or labour legislation;
- f) Matters resulting from contracts considered by law as being equivalent to employment contracts;
- g) Matters resulting from training and apprenticeship contracts;

- h) Questions concerning workers employed by the same entity regarding rights and obligations resulting from actions carried out jointly in the conduct of their work relations or which result from an illegal act carried out by one of them during or on account of the performance of their duties. In this regard the criminal courts have jurisdiction over civil liability linked to criminal liability;
- i) Questions arising between social security institutions, or those concerning family benefit, and beneficiaries, with regard to legal, regulatory or statutory rights, powers and obligations of any of these parties. This does not affect the jurisdiction of the administrative and tax courts;
- j) Matters arising between trade union associations and members or people represented by them, or affected by their decisions, with regard to the legal, regulatory or statutory rights, powers and obligations of any of these parties;
- k) Cases for the liquidation and sharing out of the assets of social security institutions or trade union associations when there are no legal provisions preventing this;
- l) Questions arising between social security institutions or trade union associations with regard to the existence, scope or nature of legal, regulatory or statutory powers or obligations of one of these parties which may affect the other;
- m) Enforcements based on their decisions or other enforcement orders, with the jurisdiction assigned to other courts being respected;
- n) Questions arising between parties to a labour relationship or between one of these parties and a third party when resulting from relations connected with a work relationship in an accessory, complementary or dependent way, and when the request is presented together with another for which the court has direct jurisdiction;
- o) Civil matters related to strikes; p
- p) Matters arising between workers' committees and the respective coordinating committees, the company or the company employees;
- q) Other matters which may be attributed to the labour courts by law.

**Commercial Courts – Commercial courts are responsible for preparing and deciding on:**

- a) Special proceedings for company recovery and bankruptcy;
- b) Proceedings for the declaration of the non-existence, nullity and annulment of a company's articles of association;
- c) Proceedings related to the exercise of rights in the company;
- d) Proceedings for suspending and annulling company decisions;
- e) Proceedings for the winding up and legal liquidation of companies;
- f) Proceedings in which the fact on which the claim is based concerns industrial property rights, in any of the methods set out in the Industrial Property Code;
- g) Proceedings referred to in the Commercial Registry Code;
- h) Proceedings for nullity and annulment envisaged in the Industrial Property Code.

**Commercial courts are also responsible for deciding on:**

- a) Appeals against decisions which, in the terms laid down in the Industrial Property Code, concede, disallow or cause the lapse of any of the private rights referred to therein;
- b) Appeals against decisions taken by the keepers of the Commercial Registry, as well as challenges to decisions handed down by the keepers within the scope of administrative proceedings for the winding up and liquidation of commercial companies;
- c) Appeals against decisions of the Competition Council and the Directorate-General of Trade and Competition, in administrative offence proceedings.

**Maritime Courts – Maritime courts have jurisdiction to hear cases related to the following:**

- a) Indemnity due to damages caused or suffered by ships, vessels and other floating devices, or resulting from their maritime use, in the general terms of the law;
- b) Contracts for the construction, repair, purchase and sale of ships, vessels and other floating devices, as long as these are destined for maritime use;
- c) Contracts for maritime transport or combined or multimodal transport contracts;
- d) Contracts for river or canal transport, within the limits laid down in Table I attached to the General Regulation of Harbour Masters;
- e) Contracts for maritime use of ships, vessels and other floating devices, namely those for charter and financial leasing;
- f) Contracts for the insurance of ships, vessels and other floating devices destined for maritime use and their cargoes;
- g) Mortgages and privileges on ships and vessels as well as any real guarantees on floating devices and their cargoes;
- h) Special proceedings related to ships, vessels and other floating devices and their cargoes;
- i) Restraining measures on ships, vessels and other floating devices, their respective cargoes and cash and other assets belonging to the ships, vessels and other floating devices, as well as preliminary requests to harbour masters to stop the departure of the assets which are the object of such measures;
- j) General or particular average including damage caused to other floating devices destined for maritime use;
- k) Maritime assistance and salvage;
- l) Towing contracts and piloting contracts;
- m) Removal of debris;
- n) Civil liability resulting from the pollution of the sea and other stretches of water under the court's jurisdiction;
- o) The use, loss, discovery or appropriation of devices or gear for fishing or harvesting seafood, molluscs and marine plants, anchors, tackle, devices, supplies and other objects used for navigation or fishing, as well as damage caused to or caused by such items;
- p) Damage caused to assets in the public maritime domain;
- q) Ownership and possession of washed-up goods and objects coming from the sea or existing remains which lie on or in the seabed or which come from or may exist in inland waters, if these are of maritime interest;
- r) Seizures;
- s) All general questions on matters of commercial maritime law;
- t) Appeals against decisions of the harbour master handed down in maritime administrative offence proceedings.

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