

[Home](#)>[Taking legal action](#)>[Where and how](#)>[How to bring a case to court](#)

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Portuguese

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How to bring a case to court

Portugal

1 Do I have to go to court or is there another alternative?

The answer to this question depends on each particular case.

As it is not possible to predict each and every problem which may occur, you should get advice from a professional in the field.

If you do not have the financial resources to do so, you may resort to legal aid (see the document below on 'Legal Aid').

An alternative means of resolving disputes may be justified, depending on the specific details of the case (see the document below on 'Alternative means of resolving disputes').

2 Is there any time limit to bring a court action?

The period during which you may bring a court action to resolve a specific dispute varies depending on the particular situation.

This aspect should also be clarified with the help of a legal professional, as mentioned in the answer to the previous question.

3 Should I go to a court in this Member State?

Without prejudice to the rules laid down in Community regulations and in other international instruments, the Portuguese courts are competent internationally:

- when the action may be brought in a Portuguese court in accordance with the rules on Portuguese territorial jurisdiction established in Portuguese law;
- when the fact which has caused the action, or any of the facts pertaining to it, occurred on Portuguese territory;
- when the right invoked may only be upheld by means of the proposed action in Portuguese territory or there is appreciable difficulty for the plaintiff in taking the action abroad, because there is an important connection, personal or real, between the subject-matter of the dispute and the Portuguese legal system.

The Portuguese courts have exclusive jurisdiction:

- With regard to rights over immovable property and the lease of property located in Portuguese territory; however, with regard to tenancies on property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the respondent is resident also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are resident in the same Member State;
- With regard to the validity of the incorporation or dissolution of companies or other legal persons with their registered offices in Portugal, as well as with regard to the validity of decisions taken by their bodies; to determine that registered office, the Portuguese court applies its rules of private international law;
- With regard to the validity of entries in public records held in Portugal;
- With regard to foreclosure on property located in Portuguese territory;
- With regard to insolvency or reorganisation of persons resident in Portugal or legal persons or companies whose registered offices are located in Portuguese territory.

4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?**Location of property**

Cases involving real or personal rights to the enjoyment of 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 brought in 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 action concerns a group of movable assets belonging to the same person and intended for a single use, or immovable and movable assets, or property located in different districts, it will be heard at the court where the most valuable property is located, which will be determined by the taxable value of the property. If the building which is the subject of the action is located in more than one judicial district, the action may be brought in any of the districts.

Competence for the fulfilment of an obligation

An action to demand fulfilment of obligations, compensation for non-fulfilment or improper fulfilment or termination of the contract for failure to comply will be brought in the court at the place where the defendant is resident. The creditor may choose the court where the obligation was to be met if the defendant is a legal person or if the residence of the creditor is within the metropolitan area of Lisbon or Porto and the defendant is also resident in the same metropolitan area.

If the action seeks to effect civil liability based on tort or on risk, the competent court is that which corresponds to the place where the event occurred.

Divorce and separation

For cases of divorce, legal separation and division of property, the competent court is that where the plaintiff is domiciled or resident.

Actions for payment of fees

Where the action concerns the payment of fees for court or technical representatives and the recovery of amounts advanced to the client, the competent court is that where the service was rendered and the two cases must be joined.

However, if the action was brought at the Appeal Court or the Supreme Court, the action for payment of fees will be brought in the district court at the place where the debtor resides.

Regulation and distribution of general average

The court for the port where the cargo is or was to be delivered from a ship which has sustained heavy losses is competent to regulate and apportion the cost of these losses.

Losses and damage from collision of ships

An action for losses and damages resulting from a collision of ships may be brought in the court at the place where the accident occurred, where the owner of the ship that struck the other resides, where the ship belongs, where it was found or the first port which the damaged ship entered.

Costs for rescue or assistance to ships

Costs due for rescue or assistance to ships may be requested at the court where the fact occurs, where the owner of the salvaged objects is domiciled or where the rescued ship belongs or is found.

An action for a ship acquired free of charge or for a consideration to be declared free of privileges must be brought in the court of the port where the ship is anchored at the time of acquisition.

Precautionary procedures and preparatory steps

With regard to precautionary procedures and steps prior to an action being brought, the following must be observed:

- a) Seizure and impounding of goods may be requested either in the court where the relevant action must be brought or in the court where the goods are located or, if the goods are located in several districts, in any one of these;
- b) For an embargo on new work, the competent court is the court in the area where the work is to be carried out;
- c) For other precautionary procedures the competent court is the court in which the relevant action must be brought;
- d) Preparatory steps for the production of evidence must be requested in the courts where those steps are to be made.

The file relating to the acts and measures referred to above is appended to the case file for the main action, so that it can be sent, where necessary, to the court in which that action is brought.

Notifications to be served are requested in the court for the area where the person to be notified resides.

General rules

The general rule of Portuguese civil procedural law on territorial jurisdiction is that all cases not expressly provided for are heard in the court at the place where the defendant resides.

If, however, the defendant has no habitual residence or is of no fixed abode or is absent, the action is brought in the court at the place where the plaintiff resides; however, an application for guardianship, whether temporary or permanent, of the assets of an absent defendant must be submitted in the court for the area in which the defendant last lived in Portugal.

If the defendant is domiciled or resident in a foreign country, the case is heard in the court at the place where he is present; if this is not in Portuguese territory, the case will be heard in the domicile of the plaintiff, and when this domicile is in a foreign country, the competent court is the Court of Lisbon.

General rules for legal persons and companies

If the defendant is the State, the court of the defendant's domicile is replaced by the court of the plaintiff's domicile.

If the defendant is another legal person or a company, the case will be heard in the court at the place of the registered office or the main office of the branch, agency, subsidiary or delegation, according to whether the action is directed against the main company or one of these offices; however, legal action against foreign legal persons or companies that have a branch, agency, subsidiary or delegation in Portugal may be brought in the court of that office, although the summons is requested for the registered office.

Several defendants and overlapping applications

Where there is more than one defendant in the same case, all must be heard in the court where the greatest number reside; if the same number reside in different places, the plaintiff may choose any one of them.

If the plaintiff accumulates applications to be considered by courts in different territorial jurisdictions, he may choose any of them in which to bring the action, except where jurisdiction to assess one of the applications depends on some connection which allows the court to determine, of its motion, its lack of jurisdiction; in this case, the action must be brought in that court.

When, however, he accumulates applications between which there is a relationship of dependency or subsidiarity, the action must be brought before the court competent for examining the main application.

General jurisdiction rules on enforcement

Except in special cases covered by other provisions, the court competent for enforcement will be the court where the debtor lives, although the creditor may choose the court where the obligation is to be fulfilled when the debtor is a legal person or when the domicile of the creditor is within the metropolitan area of Lisbon or Porto and the debtor is domiciled in the same metropolitan area.

However, if the enforcement is for the handing over of a particular item or collection of a debt with a real guarantee, the respective competent court is the court for the place where the item is to be found or the court for the place where the items used as the guarantee are situated.

When the action for enforcement is to be brought in the court of the debtor's domicile and he does not have a domicile in Portugal but has assets there, jurisdiction pertains to the court for the place where these assets are located.

In cases of overlapping enforcements to be considered by courts in different territorial jurisdictions, jurisdiction pertains to the court for the place where the debtor is domiciled.

Enforcement based on a judgement

In the enforcement of a decision by the Portuguese courts, the enforcement request is made during the case for which it was issued, and the enforcement is noted in the court records themselves and processed independently, unless the case has subsequently gone to appeal, in which case it is transferred.

When, in accordance with the law of judicial organisation, a specialised enforcement section is competent for enforcement, a copy of the judgement, the application which gave rise to the enforcement and accompanying documents must be sent to this specialised section as a matter of urgency.

If the decision was handed down by arbitrators in an arbitration which took place in Portugal, the competent court for enforcement is the district court of the place where the arbitration took place.

Enforcement of a judgement by higher courts

If the action has been submitted to the Appeal Court or Supreme Court, the court for the area where the debtor is domiciled has jurisdiction.

Enforcement based on a foreign judgement

For enforcement based on a foreign judgement, the court for the area where the debtor is domiciled has jurisdiction.

Jurisdiction of the court in relation to incidental matters

The competent court for the action also has jurisdiction over incidents that arise therein and issues that the defendant raises in his defence.

Jurisdiction for counterclaim issues

The court chosen for the action has jurisdiction over issues brought by way of counterclaim, provided that it has jurisdiction over them on grounds of nationality, subject matter and hierarchy; if not, the person against whom the counterclaim is made is acquitted of that instance.

Private pacts and conferring jurisdiction

The parties may agree on which court has jurisdiction to resolve a particular dispute or disputes which may arise from a particular legal relationship, provided that the disputed relationship has connections with more than one legal system. The agreed designation may involve the assignment to the Portuguese courts of exclusive jurisdiction or merely an alternative jurisdiction, where such exists, assuming that, in the event of doubt, it is exclusive.

The choice of court is only valid when all the following requirements are met:

- a) it relates to a dispute over available rights;
- b) it is accepted by the designated court;
- c) it is justified by a serious interest of both parties or one of them, provided that it does not cause serious inconvenience to the other;
- d) it does not involve matters which are the exclusive competence of the Portuguese courts;
- e) it is the result of an agreement which is written or confirmed in writing, and explicit mention is made of the competent jurisdiction.

The agreement is considered to be written when it is set out in a document signed by the parties or it is the result of an exchange of letters, telexes, telegrams or other means of communication that constitute written proof, whether such documents directly contain the agreement, or they contain a clause referring to another document containing the agreement.

Protection of children and young people at risk

With regard to the jurisdiction of minors, the implementation of measures to promote children's rights and child protection is the responsibility of the protection commission or court for the area where the child or young person resides at the time the notification of the situation is received or legal proceedings are brought.

If the residence of the child or young person is not known, or is not possible to determine, jurisdiction pertains to the protection commission or the court for the place where the child or young person is to be found.

Notwithstanding the above, the protection commission or the court for the place where the child or young person are to be found will take the measures deemed necessary for their immediate protection.

If, after application of the measures, the child or young person changes residence for more than three months, the case is referred back to the protection commission or the court for the area of the new residence.

Except as noted above, modifications of fact occurring after proceedings have been instituted are irrelevant.

Notwithstanding the rules on territorial jurisdiction, when the risk simultaneously covers more than one child or young person, a single legal action may be brought, and where separate proceedings have been brought, all of these can be appended to the original action, if family relationships or the specific risk situations so warrant it.

Where for the same child or young person, successive protection, educational guardianship or civil juvenile precautionary measures have been brought, details must be appended to the case file for the consideration of the judge presiding over the original action.

Educational guardianship measures

It is the responsibility of the court for the area where the minor was residing at the time the proceedings were brought to assess the facts and the application of educational guardianship measures. Where the residence of the minor is unknown, jurisdiction pertains to the court for the area where the holder of parental responsibility resides. If the holders of parental responsibility have different residences, jurisdiction pertains to the court for the area of residence of the guardian into whose custody the minor has been entrusted, or in the case of joint custody, with whom the minor resides. In other cases, jurisdiction pertains to the court for the area where custody is taking place, or if this is undetermined, the court for the place where the child is to be found.

Changes that occur after proceedings have been instituted are irrelevant.

The court for the area where custody is taking place and for the area where the minor is to be found are responsible for taking urgent measures.

5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?

Please consult the fact sheets on this page entitled 'Judicial Systems' and 'Jurisdiction'.

6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?

In cases in which it is not compulsory to be represented by counsel, the parties may represent themselves or they may be represented by trainee lawyers or by solicitors (*solicitadores*).

It is compulsory to be represented by counsel:

- a) in matters which fall within the jurisdiction of courts that are subject to thresholds and in which an ordinary appeal is allowed;
- b) in matters in which an appeal is always admissible, regardless of the amount;
- c) in appeals and cases brought in the higher courts.

Even where it is compulsory to be represented by counsel, trainee lawyers, solicitors and the parties themselves may make applications in which matters of law are not raised.

In cases where, although it is not compulsory to appoint a lawyer, the parties have not established a legal representative, the examination of witnesses is conducted by the judge, who will also adjust procedure to suit the specific circumstances.

The parties are required to be represented by a lawyer, trainee lawyer or solicitor in enforcement proceedings for a value higher than the limit applied to the court of first instance, and must be represented by a lawyer in such proceedings for a value higher than the limit applied to the Court of Appeal, or in proceedings for a value equivalent or lower than that but higher than the limit applied to the court of first instance, when this involves any procedure that follows the terms of the declaratory process.

7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?

For cases that do not require a legal representative, and where the party has no intermediary, the procedural documents mentioned above may be presented to the court in one of the following ways:

- a) Delivery to the court office, valid as of the date the document is delivered;
- b) Remittance by recorded delivery post, valid as of the date the document is sent by recorded delivery;
- c) Sent by fax or e-mail, valid as of the date the document is sent;

See also the fact sheet 'Computer Processing'.

8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?

Portuguese is used in all court documents.

Where a foreign national who cannot speak Portuguese has to give evidence in the Portuguese courts, an interpreter will be appointed for him, when necessary, in order to facilitate communication, under oath.

For documents written in a foreign language that require translation, the court, of its own motion or at the request of one of the parties, will order that the person submitting them attach a translation.

Proceedings in Magistrates Courts can be brought verbally. In all other proceedings, the action must be brought in writing.

Procedural documents required to be in writing from the parties are presented to the court in electronic format through the computer system *Citius* via the e-mail address <http://citius.tribunaisnet.mj.pt/> in accordance with the procedures and instructions contained therein, valid as of the date the document is sent. The party that submits evidence in this manner must provide the pleading and any accompanying documents in electronic format, and need not send the originals, unless the court so decides, in accordance with procedural law.

Where a case does not require a legal representative, and the party has no intermediary, please *see* the answer to the previous question.

With regard to payment order procedures, please see the relevant fact sheet.

See also the fact sheet on 'Computer processing'.

9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?

Special forms exist for applications for a writ, for enforcement proceedings and also for bringing proceedings in a Magistrates Court where, in the latter case, the applicant has chosen not to bring proceedings verbally.

Please see on this page, the fact sheets on 'Payment Order Procedures', 'Enforcement of Judgements' and 'Alternative Means of Resolving Disputes'

An action seeking a declaration is presented to the court, via an initial application in which the plaintiff must:

Designate the court and division where the action is brought and identify the parties, indicating their names, residence or registered offices and, where possible, civil identification and tax numbers, professions and workplaces;

Indicate the business address of their legal representative;

Indicate the type of action;

Outline the essential facts which have caused the action and the reasons in law which form the basis for the action;

Formulate the application;

Declare the amount of the claim;

Designate the executive agent with responsibility for issuing the summons or the legal representative responsible for promoting it.

At the end of the application, the plaintiff must submit the list of witnesses and request other evidence.

Proof of prior payment of the court fee due or of eligibility for legal aid, in place of the fee, must be attached to the application.

The court office will refuse the original application, indicating in writing the grounds for rejection, where any of the following circumstances apply:

It has no address or is addressed to another court, division of the same court or authority;

It fails to identify the parties and to give the identifying details it is required to contain (names, residences or registered offices and, where possible, civil identification and tax numbers, workplaces and professions);

It does not indicate the business address of the legal representative;

It does not indicate the type of action;

It omits the amount of the claim;

There is no proof of prior payment of the court fee due or the granting of legal aid, except in the case of urgent summons as provided in law;

It is not signed;

It is not written in Portuguese;

The paper used fails to meet regulatory requirements.

10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?

Litigation costs cover court fees, charges and costs.

Court fees

Court fees correspond to the amounts due from the case for each party and are set according to the value and complexity of the case, under the [Litigation Costs Regulation](#).

Court fees are paid only by the party which brings the action, whether as plaintiff or defendant, creditor or debtor, claimant or respondent, appellant or defendant, in accordance with the Litigation Costs Regulation.

Court fees must be paid prior to handing in the procedural document for which a fee is required (original petition or application, counterstatement, etc.), unless the party or action is exempt or the party benefits from a waiver of prior payment.

In the case of a counterclaim or main intervention, an additional court fee is due only when the counterclaimant makes an application distinct from that of the plaintiff.

An application is not considered distinct when the party intends to achieve, for their own benefit, the same legal effect as the plaintiff proposes to obtain, or when the party intends to obtain compensation only.

If different parties join in one application, the party that appears as the first party on the original petition, counterclaim or application must pay the entire court fee, without prejudice to the right of recourse against the joint parties.

If different parties join in more than one application, each plaintiff, counterclaimant, creditor or claimant is responsible for paying the respective court fee, the value being that stipulated in the Litigation Costs Regulation.

For actions brought by commercial companies which have in the previous year brought 200 or more actions, proceedings or enforcements in any court, the court fees are set in accordance with the Litigation Costs Regulation.

For the purposes of ordering payment of court fees, actions and precautionary procedures are considered particularly complex when they:

a) contain prolix pleadings or claims;

b) relate to highly specialised legal issues or highly specific technical matters or imply a combined analysis of legal issues from very different contexts; or

c) involve hearing a large number of witnesses, the analysis of complex evidence or various lengthy steps to produce proof.

Generally, the payment of the first or only court fee is made up to the date when the documents are submitted. If payment is made in electronic form, it must be proven by electronic checks, as provided for in law. If it is made in paper form, the applicant must provide proof of payment.

The second instalment of the court fee must be paid within 10 days of notification for the final hearing, and the applicant must provide proof of payment or proof of completion of such payment within the same period.

Charges

All expenses incurred as a result of proceedings are charges, whether requested by the parties or ordered by the trial judge.

Except as provided in the regulations governing access to the law, each party pays the charges which it has incurred and which are caused during the proceedings.

Charges are the responsibility of the party which requested the action or, where it has been held *ex officio*, the party that takes advantage of it.

Costs

Costs consist of the amount each party spent on the case and for which it is entitled to compensation on the grounds that the court found against the other party. They are determined as part of the court's ruling.

Payment of costs ordered by the court includes the court fees paid by the winning party, on a sliding scale, the charges actually incurred by the party, the remuneration paid to the enforcement agent and the expenses incurred by him, the legal representative's fees and expenses incurred in accordance with a detailed statement of reasons, as referred to in the Regulation.

If a plaintiff could have recourse to alternative dispute resolution mechanisms, but opts for judicial proceedings, he must bear his own costs regardless of the outcome of the action, unless the other party has made it impossible to use this form of alternative dispute resolution.

Some cases are, by force of law, exempt from the payment of costs; the same applies to certain parties.

As court fees correspond to the amount due as a result of each party's desire to litigate, any person who can be considered to be involved in the action (plaintiff, defendant, creditor, debtor, claimant, respondent, appellant or defendant) may in general be liable for court fees, since payment corresponds to the provision of a service, regardless of whether or not the case was won. The winning parties are entitled to a refund of amounts paid as court fees under the regulations governing costs.

Fees

Professional fees are set by the court which must, for this purpose, take into account the importance of the services provided, the difficulty and urgency of the matter, the degree of intellectual creativity involved in the professional's performance, the results obtained, time spent, responsibilities undertaken by him and other professional duties.

11 Can I claim legal aid?

Yes, you can, provided you satisfy the conditions for the granting of legal aid (please see the fact sheet on 'Legal Aid').

12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?

See the answers to questions 7 and 8.

When the claim is received, the formal requirements are checked by the Court officer who accepts it. At later stages of the proceedings, the judge carries out a more detailed and thorough check.

The parties are always notified of such decisions.

13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?

The Courts are not required by law to provide information of this kind. However, through CITIUS, the Ministry of Justice initiative to digitalise court proceedings, legal representatives now have the opportunity to consult cases from their offices.

Now that procedural documents are delivered electronically and entered directly in the courts' IT applications, coupled with the fact that judges use the same applications to carry out their actions, lawyers, judges and court offices can use these applications and the CITIUS portal to consult case files and documents.

Further information

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[Bases Jurídico-Documentais](#)

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