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## Defendants (criminal proceedings)

Portugalia

The following factsheets explain what happens when a person is suspected of or accused of a crime which is dealt with by a trial in court. For information on minor offences like road traffic offences - which are usually dealt with by a fixed penalty like a fine – go to Factsheet 5. If you are the victim of a crime, you can find full information about your rights here. The rights of those suspected or accused are essentially set out in the Code of the Portuguese Criminal Process.

### Summary of the criminal process

The following is a summary of the normal stages in a criminal process:

The **investigation** establishes whether a crime has been committed and identifies who by, and ends with a decision to prosecute or to close the investigation;

The "**instruction" or inquiry** stage is optional, depending on the charge, the defendant, or the plaintiff or civil party in the criminal process. It ends with a decision by the Examining Magistrate whether or not to commit the suspect to trial;

The **trial** comprises the court hearing.

Details about all of these stages in the process and about your rights can be found in the factsheets. This information is not a substitute for legal advice and is intended to be for guidance only.

### Role of the European Commission

Please note that the European Commission has no role in criminal proceedings in Member States and cannot assist you if you have a complaint. Information is provided in these factsheets about how to complain and to whom.

### Click on the links below to find the information that you need

1 – Getting legal advice

2 – My rights during the investigation of a crime

General rights

Time limits

Searches, medical examinations and evidence

3 – My rights during the trial

4 – My rights after the trial

5 – Road traffic and other minor offences

### Related links

Ministry of Justice

Portuguese Bar Association

Association of Portuguese Judges

Portuguese Magistrates' Association

Portuguese Justice Portal

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## 1 - Getting legal advice

Getting independent legal advice is very important when you are involved in some way with the criminal process. The factsheets tell you when and in what circumstances you are entitled to be represented by a lawyer. They also tell you what a lawyer will do for you. This general factsheet tells you how to find a lawyer and how the costs of the lawyer will be met if you cannot afford to pay.

### Finding a lawyer

A defendant has the right to choose a lawyer, or to ask the court to appoint one. The Portuguese system of access to justice and to the courts is designed to ensure that all citizens are entitled to defence.

### Paying for a lawyer

The **social security services** are responsible for the procedure to grant legal aid.

Legal aid takes the following forms, all of which may be applied for:

Exemption from payment of court fees and other charges;

Appointment of a lawyer or defence counsel, and payment of his fee;

Deferred payment of court fees and other charges;

Deferred payment of the officially-appointed counsel's fee.

The defendant's financial capacity is evaluated in accordance with criteria set out in the law, and in particular the income of the defendant's household.

If the application for legal aid is rejected, the defendant can appeal to the court.

So long as the application for legal aid is pending, the defendant is entitled to legal aid in the form of exemption from or deferred payment of court fees.

### Related links

Ministry of Justice FAQs (in Portuguese)

Citizens' portal (in Portuguese)

Portuguese Justice Portal (in Portuguese)

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## 2 - My rights during the investigation of a crime and before the trial

**What are the stages of a criminal investigation?**

A criminal investigation begins when the Public Prosecutor or the Criminal Police Department is notified that a crime has been committed.

The criminal investigation is the responsibility of the Public Prosecutor, who conducts it with assistance from the Criminal Police Department.

This stage involves establishing the evidence that a crime has been committed, and who committed it.

During the investigation, the Examining Magistrate alone has the right to:

Question a suspect within 48 hours of arrest, if the suspect has been detained by the police and the hearing is not to take place immediately;

Apply any coercive measure, other than restrictions on movement;

Authorise wiretaps, the interception of correspondence, searches of dwellings, law offices, banks, doctors' offices and official health establishments;

Authorise the temporary suspension of the criminal process;

Decide to curtail or close the process if the complaint is withdrawn before any charges are brought;

Close the process if the complaint is withdrawn after charges are brought and during the inquiry process.

If you are being investigated in connection with a crime, you may make statements to a judicial authority or to the Criminal Police Department only if you have been formally notified that you are a suspect.

You would be notified by being handed a document stating the criminal inquiry and the defending counsel's identity, and listing your rights and obligations.

If the formal notification is made by the Criminal Police Department or the Public Prosecutor, it must be validated.

On completion of the investigation, the Public Prosecutor decides whether to bring charges or to close the file.

Following the bringing of charges by the Public Prosecutor, and if you do not appeal, the case then goes to court.

The Examining Magistrate's inquiry is not a compulsory stage. It comprises the various inquiries which the Public Prosecutor requires of the Magistrate (e.g. questioning witnesses or obtaining expert opinion) and which will be needed from the Magistrate to support the Prosecutor's decision.

**For more detailed information about your rights during the various stages of the investigation, click on the links below:**

General rights (1)

Time limits (2)

Searches, medical examinations and evidence (3)

**General rights during the investigation (1)**

**Your rights during a criminal investigation**

If you are a suspect in a criminal investigation, you have the following rights:

To be present at all events during the criminal process which directly relate to you;

To be heard by the court or by the Examining Magistrate on every occasion when they must reach a decision which personally affects you;

To be informed of the facts relating to you before making any statement to any authority;

Not to respond to questions by any authority concerning the facts which relate to you or the content of any statement you may have made about them;

To appoint a lawyer, or apply for defending counsel to be appointed;

To be assisted by defending counsel in all events of the criminal process at which you are present and, if detained, to consult counsel, including in private;

To intervene in the investigation, offering evidence and calling for such inquiries as you may see fit;

When appearing before the judicial authority or the Criminal Police Department, to be informed of your rights;

To appeal against any decision against you.

**What information am I entitled to?**

If you are designated as a suspect, from that moment on, you should consider yourself as suspected of a criminal offence.

The notification includes a statement of your rights and responsibilities in the process which will, if necessary, be explained to you.

You will be handed a document which includes a statement identifying the criminal process involved and, if defending counsel has been appointed, the counsel's name.

You are entitled to information from the Public Prosecutor, the Criminal Police Department, and the Examining Magistrate regarding the acts which you are suspected of before you make any statement whatsoever.

If you are detained, when you are brought before the Magistrate for questioning, the following must be explained to you:

the reasons why you are being detained,

the acts you are suspected of (in so far as their time, place and manner are known)

the evidence for the acts which you are suspected of (provided that disclosing information about them does not adversely affect the inquiry and presents no danger to those involved in the criminal process or to the victims of the crime).

**Will an interpreter be provided if I don't speak the language?**

Yes.

**At what stage will I be able to speak to a lawyer?**

You can speak to a lawyer at any stage in the process. Even if you are in custody you can speak to your lawyer whenever you wish, including in private.

**Will I be asked for information? Should I provide information?**

You must respond truthfully to questions regarding your identity. You have the right to silence if you are questioned by any authority on the acts of which you are suspected of. Failure to respond cannot be held against you.

**What happens if I say something which is bad for my case?**

Your statements can be produced as evidence, but they only count as an admission of guilt if they are made before the Magistrate.

The written record of your statements made during the investigation may only be read in court at your own request or, if they were made before the Magistrate, if there is any conflict or discrepancy between them and the statements you make in court.

They may also be read to the court if you choose to remain silent in court.

**Can I contact someone if I am held in custody?**

If you are detained or in custody you have the right to contact someone you trust. That includes your embassy.

**Can I see a doctor if I need one?**

You are entitled to any health care and medical attention you need. The request should be made to the person taking you into custody.

**I am from another country. Do I have to be present during the investigation?**

Not unless you are taken into custody or ordered not to leave Portugal. Only the Magistrate can do that.

**Can I take part by video link, etc.?**

The law provides for questioning to be conducted by videoconference, if the person being questioned lives outside the judicial district in which the inquiry is taking place.

If you are resident in another Member State and you wish to make a statement and cannot make the journey to Portugal, you can ask for your statement to be made by videoconference.

**Can I be sent back to my own country?**

Yes. But only for an actual or attempted criminal offence which is punishable by imprisonment both in Portugal and in the requesting State. You cannot be extradited if the crime you are suspected of was committed in Portugal. No-one can be extradited for a crime punishable by death or life imprisonment.

**Will I be held in custody or be released?**

You may be held in custody if the matter is urgent, and before a formal application for extradition is made.

Custody may be replaced with other coercive measures in accordance with the Code of the Portuguese Penal Process.

Remand in prison may be applied only if:

You have already been formally designated as a suspect;

Incarceration is necessary and appropriate to prevent the risk of you absconding, disturbing the criminal process, continuing criminal activity, or severely disturbing public order;

You are suspected of a crime carrying a penalty greater than five years in prison;

You are suspected of terrorism or violent or highly organised crime carrying a penalty greater than three years in prison;

You entered or are living in Portugal unlawfully, or are subject to an extradition or expulsion process.

**Can I leave the country during the investigation?**

You are free to leave the country provided you are not detained. If you intend to leave for more than five days, you must report your new address.

**Can I plead guilty to all or some of the charges before the trial?**

You can admit the facts to the Examining Magistrate, but if you choose to remain silent in court, that confession will not be valid.

**Can the charges be amended before the trial?**

It can happen that a change in the facts described in the accusation comes to light during the Magistrate's investigation, as a result of which the charge should be different or there is an increase in the maximum penalty for the crime involved. If this is reported to the Public Prosecutor, he must drop the charges and start again with the new facts. In other words, the new facts cannot be taken to trial.

If such a change does not imply a different charge or heavier penalty for the offence with which the suspect has been charged, they can be brought to trial. In that case, extra time is allowed for the defence.

**Can I be formally charged with a crime I have already been charged with in another Member State?**

No. No-one can be tried twice for the same actions.

Will I get information about the witnesses and other evidence against me?

During the investigation you will have access to the information available in the file, provided that information is not subject to judicial confidentiality and that the witnesses are not subject to special protection of their identity. Once the time limit for the investigation has expired (or it has been closed) you can consult all the documents in the file. The only exception is in the case of terrorism or violent or highly organised crime, where the Examining Magistrate may decide that access to the file must be denied for up to three months, renewable once only.

**Will information be requested about my criminal record?**

Yes.

**Time limits (2)**

**What time limits apply to the investigation and the inquiry?**

The investigation must be completed within six months if any suspect is remanded in custody (or assigned to residence), and eight months if no-one is in custody, in cases of terrorism or violent or highly organised crime, and crimes carrying a maximum penalty of more than eight years in prison.

The six-month time limit for investigation may be extended to ten months, in exceptionally complex cases, and twelve months, in cases of terrorism or violent or highly organised crime, and crimes carrying a maximum penalty of more than eight years in prison.

The Examining Magistrate's inquiry should be complete within two months if any suspect is remanded in custody, four months if no-one is in custody, and three months if the crime involved is one of those listed as justifying an extended period of preventive custody (see below).

The maximum periods for remand in custody are:

Four months, counting from the date first decided, when no charges have been laid;

Eight months, counting from the date first decided, when a Magistrate's inquiry has been opened but no decision reached;

Fourteen months, counting from the date first decided, so long as there has been no conviction by a lower court;

Eighteen months, counting from the date first decided, so long as there has been no final conviction.

In cases which are exceptionally complex as a result of the number of suspects or the highly organised or especially serious nature of the crime, the maximum terms of preventive custody are increased to one year, sixteen months, thirty months, and forty months respectively.

A six-month extension applies to the maximum terms of remand in custody when there has been no conviction in a lower court or no final conviction, in cases of appeal to the Constitutional Court, and where the criminal process has been suspended pending judgment of a prejudicial case in another court.

**What happens if the time limits for completion of an investigation are not met?**

You can request that the process be speeded up. The request goes to the State Prosecutor.

**What happens if the time limits for completion of a Magistrate's inquiry are not met**?

The time limits are guidelines and no consequences result if they are exceeded.

**Searches, medical examinations and evidence (3)**

**Will I be asked for fingerprints, samples of my DNA (e.g. hair, saliva), or other body fluids?**

You may be ordered to undergo medical and forensic tests, including blood tests. During the inquiry such tests are ordered by the Public Prosecutor, but if you refuse, it is for the Examining Magistrate to decide.

**Can there be a body search?**

Yes. During the investigation it can be authorised or ordered by the Public Prosecutor. In the inquiry stage it can be authorised or ordered by the Examining Magistrate. A body search must pay due respect to your personal dignity and modesty.
If the matter is urgent, a body search may be undertaken immediately by the Criminal Police Department:
If there is good reason to believe that a crime is about to be committed in which someone's life or safety is in danger, and in cases of terrorism or violent or highly organised crime;
If you agree to be searched;
In cases where the crime carries a prison sentence and the individual is caught in the act.

**Can my home, business premises, car, etc. be searched?**

Searches of domestic premises can only be carried out between 7 am and 9 pm and must be authorised by the Magistrate.
During the investigation stage, searches of premises other than dwellings, law offices, doctors' offices and official health establishments may be authorised or ordered by the Public Prosecutor.
In specific cases a search can be carried out immediately by the Criminal Police Department, including between 9 pm and 7 am:
If there is good reason to believe that a crime is about to be committed in which someone's life or safety are in danger, and in cases of terrorism or violent or highly organised crime;
If the individual agrees to be searched;
In cases where the crime carries a prison sentence of more than three years and the individual is caught in the act.

**Can I appeal?**

No appeal can be made against an order authorising a search. However, if a search was carried out without complying with the conditions making it lawful, evidence obtained during the search cannot be used.

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## 3 - My rights during the trial

**Where will the trial be held?**

The trial will be held in a court in the area where the crime was committed. The trial will be heard in the Single-judge court if the maximum possible penalty for the crime is 5 years in prison. A collective court will hear the case if the maximum possible penalty is more than 5 years, or if certain types of serious crime are involved. A jury court will hear the case if you, the Prosecutor or the victim request that the case should be heard before a jury. This is possible where the maximum penalty is more than 8 years in prison, or in relation to certain types of serious crime.
Generally, the case will be heard by a court in the area where the crime was committed.

**Will the trial be in public?**

As a rule, yes, except when the judge decides otherwise or human-trafficking or sex crimes are involved.

**Can the charges be changed during the trial?**

If a minor change in the facts described in the indictment or charges becomes apparent during the course of the trial, the president of the court can tell the defendant about the change and, if he asks, allow the necessary time to prepare a new defence.
If a substantial change becomes apparent in the facts, the court cannot take it into account against the defendant. Neither does it imply the end of the process.
The only exception is if the Prosecutor, the defendant and any civil party all agree that the trial should continue, taking account of the new facts.

**What happens if I plead guilty to some or all of the charges during the trial?**

If you plead guilty of your own free will, the facts will be taken as proved and no further evidence will be called.

**What are my rights during the trial?**

You still have all your rights as a suspect: the right to be present at the hearing, the right to remain silent, and the right to make statements and provide further clarification, all with the support of a lawyer.

**Do I have the right to be present at the trial?**

Yes, you do: that is the rule. Exceptions can be made when the defendant is unable to attend by reason of old age, serious ill-health or residence abroad.
The trial can be held in your absence if the court decides that your presence is not necessary to establish the material facts.

**If I live in another Member State, can I participate by video link?**

The law provides for questioning to be conducted by videoconference if the person being questioned lives outside the judicial district in which the inquiry is taking place.

**Will I have an interpreter if I don't understand what's happening?**

Yes.

**Must I have a lawyer?**

Yes, unless the charges do not carry a prison sentence or a detention order.

**Will a lawyer be allocated to me?**

Yes, unless you appoint one yourself.

**Can I change my lawyer?**

Yes.

**Can I speak at the trial?**

Yes. Any defendant has the right to speak or to remain silent, as he chooses.

**What are the consequences if I don't tell the truth during the trial?**

You must answer truthfully questions regarding your identity and your criminal record. There is no penalty if you do not respond truthfully regarding the charges against you. The Judge will draw his own conclusions about your statements.

**What are my rights in relation to the evidence against me?**

You can challenge the evidence and present your own. You can challenge the way the evidence was obtained (e.g. an unauthorised wiretap, a search made out of hours, an admission not made in accordance with the rules).
You may call witnesses to refute the evidence of others, notably by challenging their credibility (e.g. by alleging that a particular witness is trying to prejudice you).
You can challenge the quality of expert witnesses, calling for a second expert opinion. You can challenge the meaning of a document.

**Can I use a private detective to obtain evidence for me?**

Any evidence which is not prohibited by law is admissible. Evidence obtained by torture, coercion or, generally, by means of physical or psychological harm is not. Provided evidence is obtained lawfully, you can call on a third party like a private detective to obtain it.

**Can I ask witnesses to speak for me?**

Yes. As a rule you can call up to 20 witnesses. The limit of 20 can be exceeded if that is necessary to establish the material facts.

**Can I or my lawyer ask questions of the other witnesses in the case?**

It will be for your lawyer to question the other witnesses, not you. Any witness is first questioned by the person who calls him, and then questioned by the other side. After a witness has given his evidence, you can always invoke your right to make statements at any time during the trial. This means you can challenge the witness's evidence, give your own version of the events, and give any further clarification you think necessary.

**Will information about my criminal record be taken into account?**

Yes. Details of your identity and records of court verdicts will be taken into account during sentencing when your character is being assessed and the court is considering whether, for example, the sentence should be suspended.

The record can also be consulted when a coercive order is being considered: for example, if you have a lengthy record and have been charged with a serious crime, the judge could order remand in custody on the grounds that if he does not, you would continue criminal activities until the case comes to trial.

**What are the possible outcomes of the trial?**

Either you are cleared, or you are found guilty of one or more offences. You may also be ordered to pay cash compensation.

**Possible sentences**

Two sentences are possible: prison or a fine.

**Prison**

As a rule, a prison sentence is for not less than one month, and not more than 20 years. The absolute maximum is 25 years.

**Substitution of a short prison sentence**

A prison sentence of up to six months can be substituted by a fine or some other non-custodial sentence, unless the prison sentence was requested to prevent you from committing further crimes. If you do not pay the fine, you must serve the prison sentence.

**Weekday release**

A prison sentence of up to three months, which is not substituted by a fine or some other non-custodial sentence, can be served on weekday release, if the court agrees that is appropriate. . Weekday release means spending weekends in prison, up to a maximum of 18 weekends.

**Restricted-day release**

Restricted-day release allows you to continue your normal working life, job-training or studies, by means of day release strictly limited to those obligations, during a prison sentence of up to three months.

**Fines**

A fine is expressed in days and, as a rule, is not less than ten days and not more than 360.

**Replacement of fines by work**

At the defendant's request, a fine may be wholly or partly replaced by days of work.

**Conversion of unpaid fines to imprisonment**

If a fine is not replaced by days of work and remains unpaid, the corresponding prison sentence is reduced to two-thirds.

**Community service**

A prison sentence of one year or less can be replaced by community service, provided the court decides that such a sentence will meet the need for punishment.

**Warning**

A fine of 120 days or less can be replaced by a warning, provided the harm done by the crime has been made good and the court decides that is appropriate.

**What is the role of the victim during the trial?**

The victim may be a formal civil party, assisting the Prosecutor in the inquiry and the trial. He can, as a rule, bring a private prosecution, and must do so in the case of crimes where the Prosecutor cannot act alone. He can claim compensation for damages suffered. The civil party has the support of a lawyer.

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## 4 - My rights after the trial

**Can I appeal against the decision at the trial?**

Yes. The rule is that you can appeal against conviction by a lower court. The appeal can only be against the conviction and the sentence.

**How? Who to? What time limits apply?**

By submitting an appeal to the Appeal Court (*Tribunal da Relação*) or to the Supreme Court. The time limit to submit an appeal is 20 days.

**What are the grounds of appeal?**

As a rule, an appeal must be based on information known to the court when reaching its judgment.

**What happens if I appeal?**

If you appeal against a final judgment the decision will, as a rule, be suspended.

**What happens if I am in prison when I appeal?**

The judgment remains suspended and you remain in prison on remand, subject to the usual time limits.

**How long will it be before the appeal is heard?**

There is no set time limit, but appeals are heard within a reasonable period: two to six months.

**Can I produce new evidence for the appeal? What rules apply?**

As a rule, no, you cannot produce new evidence for the appeal. You can however do this if the appeal is for a retrial when, after the judgment has become final, new and relevant information comes to light which could result in the judgment being overturned. Both the appeal and the circumstances are exceptional.

**What happens at the appeal hearing?**

As a rule, appeals are not heard in open court. The Court considers the process and decision against which the appeal is made, assesses the claims made by the parties concerned and how well-founded they may be, and reaches its decision.

**What can the court decide?**

The Appeal Court can confirm the lower court's finding of innocence or guilt, change the finding, or send the case back for retrial.

**What happens if my appeal is successful/fails?**

If the appeal is successful, you only have to wait until the decision becomes final. If the appeal fails, you can in certain cases appeal to the Supreme Court.

**If the first decision was wrong, will I get any compensation?**

Anyone who has been wrongfully detained, remanded in custody or assigned to residence may demand compensation for damages when the loss of liberty was unlawful or the result of gross error. Getting such compensation from the State is not easy.

**If my appeal is successful, will a record be kept of the conviction?**

No. If the court clears you, no record will be kept.

**Is further appeal possible if the first appeal fails?**

No appeal is possible against a decision of the Appeal Court confirming the judgment of a lower court in a case where the sentence was eight years in prison or less. Similarly, there is no appeal against a decision of the Appeal Court confirming the judgment of a lower court in a case where no prison sentence was passed. An appeal can be made against a decision of the Appeal Court confirming the judgment of a lower court in a case where the sentence was more than eight years in prison.

**When is the conviction final?**

Once the time limit for any ordinary appeal has passed.

**I am from another Member State. Can I be sent back there after the trial?**

Under certain circumstances, after the trial you can be extradited to serve your sentence in the Member State which demanded the extradition.

**In what circumstances?**

Where you have been convicted of a crime, or an attempted crime which is punishable in the requesting Member State by not less than one year in prison. The time remaining to be served must be not less than four months.

**Is transfer automatic?**

No. The extradition procedure must come first.

**What conditions apply?**

The extradition procedure includes an administrative stage and a judicial stage. The administrative stage is to enable the Minister of Justice to evaluate the extradition request and decide whether to approve it, bearing in mind the guarantees offered. The judicial stage is for the Court. If there is an appeal against the final decision, the Supreme Court decides. Any appeal suspends the decision to extradite.

**If I am convicted, can I be tried again for the same crime?**

No.

**Can I be tried in another Member State for the same crime?**

That depends on the law of the other Member State. Not in Portugal.

**Will information about the charges and/or the conviction be added to my criminal record?**

Convictions are added to the defendant’s criminal record.

**How and where will that information be held?**

Portuguese criminal records are held at the central registry of the Criminal Identification Service.

**How long will it be held?**

That depends on the seriousness of the crime.

**Can it be held without my consent?**

Yes.

**Can I object to the holding of the information?**

When the sentence is non-custodial or less than a year in prison, the defendant can apply to the Court for the conviction not to be mentioned on certificates produced in support of job applications.

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## 5 - Road traffic and other minor offences

Minor offences and the fines and penalties they give rise to are dealt with by the administrative authorities.

No fine or penalty may be imposed without the defendant first having been heard. In the case of offences where the fine is not more than 50% of €3740.98 and €44,891.81, the fine may be paid voluntarily at any stage of the procedure prior to judgment. An appeal may be made against any decision by the administrative authority imposing a fine. The court may order the procedure to be closed, find the defendant not guilty, or maintain or amend the penalty. An appeal against that court’s decision may be made to the Appeal Court (*Tribunal da Relação*).

**Who deals with traffic offences?**

Traffic offences are dealt with by the National Highways Authority (*Autoridade Nacional Rodoviária*).

**What is the procedure?**

If an official or official agent witnesses a traffic offence, he makes a written report of the event.

The facts witnessed by the official and set out in the written report are regarded as true until proved otherwise.

After the report is drawn up the defendant must be notified of (1) the facts amounting to the offence, (2) the law that has been broken, (3) the applicable penalties, (4) the address to which any defence should be sent and the time limit allowed, and (5) any other relevant information.

The defendant has 15 days from the date of notification in which to submit his defence in writing.

The decision imposing the fine or penalty must include: (1) the identity of the offender, (2) a short description of the facts, evidence and other significant circumstances, (3) a statement of the regulations which have been broken, the fine or penalty and the costs. The notice must also state that an appeal can be made, and how to make it.

**What penalties are possible?**

The penalties include fines, a driving ban or cancellation of the driving licence.

**Are such offences pursued against nationals of other Member States?**

Yes. Offences committed within Portugal can be punished regardless of the nationality of the offender.

**Can I appeal?**

By written appeal addressed to the Court to which the authority in question is answerable (see above).

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