



Fair Trials is a non-governmental organisation that works for the right to a fair trial according to internationally-recognised standards of justice.

This factsheet covers:

- Definitions of key legal terms;
- Information about criminal proceedings and defence rights in Portugal; and
- Useful Links

We have prepared this factsheet with the assistance of local criminal lawyers, who tried to describe how things happen in reality. Even within one country, however, practice can vary greatly from one place to another your own experience could differ from the descriptions below. This document does not constitute legal advice and only provides general information. If you need advice in relation to your specific case, or if you are concerned about a possible violation of your rights, you should discuss this with your local lawyer.

If you think an important question is not covered by this note, please let us know by filling out the sheet attached at the end. We would also appreciate it if you could also take a few moments to give us some feedback about this note. Your comments will help us to improve our services.

*"Fair Trials" comprises Fair Trials International and Fair Trials Europe. Fair Trials International is a registered charity (no. 1134586) and in 2010 was incorporated with limited liability in England Wales (no. 7135273). Fair Trials Europe is a registered public foundation in Belgium (registered number 0552.688.677). We were initially founded in 1992 with the name "Fair Trials Abroad".*

#### **IMPORTANT**

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## **DEFINITIONS OF KEY LEGAL TERMS**

**Appeal** (*Recurso*): An opportunity to dispute a decision made by a judge or the court by asking a higher court to review it. This can result in the decision being overturned or changed.

**Bail**: The temporary release from police custody or prison of a person accused of a crime and awaiting trial.

**Bar Association** (*Ordem dos Advogados*): An organisation whose role is to represent lawyers and help people in their dealings with lawyers. The Bar Association in Portugal also has the authority to discipline lawyers, if they have not acted in accordance with their professional duties.

**Charge/Indictment** (*Imputação/Acusação*): An official statement (often, but not always, in writing) accusing a person of carrying out an offence.

**Consulate** (*Consulado*): The section of the embassy whose task is to assist its citizens.

**Court of Appeal** (*Tribunal da Relação*): A court that is competent to hear appeals (i.e. challenges) made to decisions of the lower courts in the second instance. Appeals from the Court of Appeal are heard by the Supreme Court (*Supremo Tribunal*)

**Court of First Instance** (*Tribunal de Primeira Instância/Tribunal de Comarca*): A lower court where a trial is initially heard.

**Embassy** (*embaixada*): The office of a government official who resides in a foreign country and represents his/her government's interests.

**European Court of Human Rights** (*Tribunal Europeu dos Direitos do Homem / Tribunal Europeu dos Direitos Humanos*): The Court is based in Strasbourg, France, and hears human rights cases against the 47 countries which make up the Council of Europe (which is different from the European Union).

**Fast track proceedings or summary proceedings** (*processo sumário*): This is the name given to proceedings that usually take place immediately after arrest and detention by the police. There are other fast track proceedings known as *processo abreviado* and *processo sumaríssimo* which do not tend to take place immediately after arrest. These proceedings are usually only used in simple and straightforward cases.

**Investigative Judge** (*juiz de instrução*): A judge who performs an examining role and is actively involved in the conduct of investigations. The investigative judge is responsible for determining whether or not the accused should be released or kept in detention during the pre-trial stages.

**Judge** (*juiz*): A person with authority to hear and decide on cases in a court of law.

**Judgment** (*sentença*): A decision on a case provided by a judge or jury in a court of law.

**Lawyer** (*advogado/a*): A person whose profession is to give legal advice and assistance to clients and represent them in court or in other legal matters.

**Legal Aid** (*apoio judiciário*): Financial assistance provided to a person who needs a lawyer and who cannot afford to pay for one.

**Parole judge** (*juiz to Tribunal de Execução de Penas*): The judge deciding on early release from prison after a prison sentence was given.

**Police Custody** (*detenção*): Detention of a suspect by the police after arrest.

**Pre-trial Detention** (*prisão preventiva*): Detention in prison during the investigations (and often during the trial itself as well), which happens before the decision on guilt or innocence is made by the court.

**Public Prosecutor** (*Procurador do Ministério Público*): A magistrate who conducts a case against a person accused of a crime.

**Remand**: The act of sending a person accused of a crime into police custody, or prison, until their trial.

**Sentence** (*pena*): The punishment assigned to a person convicted of a crime as fixed by a court of law.

**Victim** (*vítima/ofendido*)

**Warrant** (*mandado*): A document issued by a legal or government official authorising the police to make an arrest, search premises, or carry out some other action relating to the administration of justice.

**Witness** (*testemunha*)

## **INFORMATION ON CRIMINAL PROCEEDINGS AND DEFENCE RIGHTS IN PORTUGAL**

### **Q1. WHERE DO THE LAWS OF PORTUGAL APPLY?**

The laws apply in Portugal, which includes the Azores and Madeira islands.

There are certain cases for which you may be tried in Portugal, even if the offence did not take place within its territory.

### **Q2. WHAT ARE MY RIGHTS UPON ARREST?**

#### **(a) Right to information:**

##### **(i) Will the police inform me of my rights? Will this be done orally or in writing?**

You will be notified of your rights upon arrest. This information will be provided orally and also often in writing; you will receive it in Portuguese or in another language that you understand.

**(ii) Do I have the right to be informed of the allegations/charges against me?**

Yes, prior to any interrogation, you must be informed of the allegations/charges against you in a language that you understand. Charges will be translated orally into a language you can understand. It may take some time until you receive a written translation.

**(b) The right to inform people:**

**(i) Do I have a right to have the consulate informed of the arrest?**

If you are not a Portuguese citizen, the Portuguese authorities will usually inform your consulate of your detention; this does not always happen immediately but you do have the right to call the nearest consulate. You should ask your lawyers to contact the consulate if you do not believe that this has been done.

**(ii) Do I have a right to inform my family of the arrest?**

You are allowed to inform one person of your choice that you have been detained.

**(c) Do I have a right to a lawyer?**

Yes, you do have the right to assistance from a lawyer.

Suspects who are arrested by the police should be given access to a lawyer automatically. They can ask the police to call a lawyer they know or, if they do not know one, they can ask the police to call a duty lawyer.

Suspects who are not arrested (but who are, for instance, summonsed to attend the police station for an interview) also have a right to a lawyer, but they have to expressly ask for it, when asked if they want a lawyer, or if they waive this right.

Witnesses also have the right to be assisted by a lawyer when they are interviewed.

**(d) Do I have a right to a translator/interpreter?**

Yes, you have a right to an interpreter. This right must be provided from the time you are made aware of being suspected, or accused, of a criminal offence, until the end of the criminal proceedings, including during the sentencing and ruling on appeal.

It is compulsory for the authorities to appoint an interpreter if you do not understand Portuguese. The interpreter is provided by the court free of charge. If you are unhappy with the interpreter who is provided to you, you can ask for a different one.

Interpretation should be available for you to communicate with your legal counsel on matters relating directly to any questioning or hearing during the proceedings, or to the lodging of an appeal. You are entitled to have an interpreter for your conversations with your lawyer other than the one appointed for the proceedings.

You are entitled to receive, within a reasonable time period, a written translation of essential documents, namely:

- Any decision depriving you of your liberty;
- Any charge or indictment;
- (And at a later stage, the judgment).

**(e) Do I have to talk to the police or can I remain silent during police interrogation? Will it work against me if I am silent?**

You have the right to remain silent at any interrogation. It is forbidden for the authorities to draw any negative conclusions from that silence.

It is generally advisable to remain silent if: there is no lawyer present; you do not have a consistent story (and a strong defence that proves you cannot have committed the offence); or if you have not been able to view your file and so you do not fully understand the accusations against you.

You should always discuss whether or not to remain silent with your lawyer.

**Q3. WHEN WILL I KNOW ABOUT THE CASE AGAINST ME?**

In general, if you are formally indicted (i.e. it is decided that there is enough evidence against you and your case will proceed to trial), you will have 20 days in which to examine the charges against you and to contest them.

You will be able to see your case file (which contains all information about the accusations against you, the evidence available and the investigation so far) before your hearing. There are several weeks (or even months) between the time when you are charged and your trial, so you will have plenty of time to prepare your defence based on the information contained in the file.

However, note that during the investigation phase of the proceedings, cases may be subject to judicial secrecy. This means that your lawyer may have access to the statement you gave to the police, but s/he may only have limited access to the documents supporting the case against you. Only the prosecutor and the judge will have access to all the documents supporting the case against you. The judge can look at these documents when s/he decides whether to keep you in pre-trial detention, or prison, before your trial.

There are also two situations where you will not have access to your file:

1. If there is a risk that you it would severely jeopardise the investigation if you were made aware of the content of the file, i.e. if it would endanger the life, the physical and psychological integrity, or the freedom of the people intervening in the proceedings.
2. If your trial is being fast-tracked under proceedings known as “processo sumário”, you will only be given access to your file immediately before the court hearing. However, note that you are allowed to ask for some time (up to two weeks) to prepare your defence.

#### **Q4. HOW DO I FIND A LAWYER? WHAT IS THE ROLE OF MY LAWYER?**

##### **(a) How do I find a lawyer?**

In criminal cases, you must be represented by a lawyer. If you do not appoint your own lawyer, the state will always appoint one for you. This will be done prior to your trial, and at the very latest, when you are formally indicted.

If you are a foreigner and do not speak Portuguese, a lawyer must be appointed to you even earlier than that (i.e. from the moment that you participate in any part of criminal proceedings).

You can find a lawyer through the Portuguese Bar Association, which keeps lists of lawyers. You might also find it helpful to get in touch with the *Forum Penal*, and association of criminal lawyers in Portugal, whose details can be found at the *Useful Links* section.

##### **(b) I cannot afford to pay for a private lawyer, what should I do? (Is there legal aid? How should I apply? What are the criteria to be eligible? What is covered by legal aid?)**

In Portugal, the system of “legal protection” allows people who cannot afford to pay for a lawyer to receive free legal assistance. This protection includes both legal advice and legal aid.

##### ***Legal advice***

Free legal advice is provided through law firms and law centres located across Portugal. They are staffed by lawyers who are competent to give general information on legal matters and advise on the procedure for applying for legal aid, if necessary. You can request an appointment in one of the Centres.

##### ***Legal aid***

Legal aid can be granted to both EU and Portuguese nationals, and to foreigners. Legal aid can cover court costs and other expenses related to the legal process. Legal aid does not pay for lawyers that you have appointed yourself - only state appointed lawyers. The availability of legal aid depends on your financial means.

##### ***How do I apply for legal aid?***

Applications for legal aid should be made to the nearest social security office. You need to fill in a form (called *requerimento de protecção jurídica*) provided by that office; this form is available in several languages and can also be found on the internet. Applying for legal aid can also be done while in custody, through the prison social services. You must submit proof of financial eligibility. You will be notified of the decision in writing.

If you have requested that a lawyer be appointed for you, the court will inform the bar association, which will find you a lawyer. You cannot request a lawyer of your own choice to be paid under legal aid.

Note that if no notification is sent within 30 days, legal aid is considered to have been granted (however, you should check this with the social security office which processes the application).

***Do I have to pay something?***

If you do not apply for legal aid, but you are using a state appointed lawyer, you will have to bear the costs of legal representation. These costs are to be paid at the end of the proceedings. However, if you are acquitted, or the case against you is closed without charges, you will not have to bear any costs. If you are acquitted but were using a lawyer of your own choice, then you will have to pay him/her.

In some circumstances, people are only granted partial legal aid (i.e. they must contribute towards some of the costs, or they must pay the costs in instalments).

**(c) What is the role of my lawyer? Will s/he investigate the case?**

Your lawyer will give you legal advice based upon the evidence received and s/he will represent you in court.

Your lawyer will only be able properly to represent you if you provide him/her with as much information as you can.

If you give your lawyer relevant information, s/he can also request that the prosecutor or the judge dealing with your case obtain further evidence. The decision to do so or not remains at the discretion of the judge.

Private investigation is not permitted in Portugal and a lawyer has no coercive powers that allow him/her to obtain evidence.

**(d) I am unhappy with my lawyer: How can I change lawyer? How can I complain about my lawyer?**

A good first step is to speak to your lawyer about your concerns. If that does not resolve the issue, you can complain about your lawyer and seek to have another lawyer appointed.

If you are on legal aid and you are not satisfied with the lawyer who has been appointed to represent you by the court, you may apply to the bar association for substitution, although you will have to be able to demonstrate that you have reasonable grounds to do so. You cannot choose your lawyer.

If you have instructed your lawyer privately, then you are free to change lawyer and appoint another one. You need to inform your lawyer that you are appointing another one.

Complaints against lawyers can be brought to the lawyers' regulatory body in Portugal (*Ordem dos Advogados*). Note that the court which is hearing your case is not in a position to hear complaints against your lawyer. However, if your lawyer was negligent, a separate civil action can be started against him/her (this will be a different legal case).

Before making a complaint, it is advisable to consult another lawyer as legal action is sometimes taken against complainants (for defamation).

**Q5. WILL I HAVE TO STAY IN PRISON UNTIL MY TRIAL STARTS? IF SO, FOR HOW LONG?**

The information given below is specific to Portugal. For general information and tips about how to obtain your release prior to your trial, please refer to our note of advice on *Applying for Release Pending Trial*.

**(a) Will I have to stay in prison until my trial starts? What are the alternatives?**

You may have to stay in prison until your trial starts. Although there is a presumption that people should be given bail (i.e. should be released pending trial), in many cases defendants, particularly when they are not residents of Portugal, are kept in custody.

Reasons for keeping people in custody are to prevent them from:

- 1) Failing to attend their trial (i.e. absconding);
- 2) Tampering with evidence or interfering with witnesses;
- 3) Committing another offence; or
- 4) Being a danger to others or to yourself.

Note that time served in pre-trial detention will be considered as part of your sentence.

If you are not kept in pre-trial detention, you may have conditions imposed on your freedom. You may be subject to house arrest with electronic monitoring (i.e. a tag); asked to report to the police station on a regular basis; prohibited from leaving the country; prohibited from contacting certain people; prohibited from leaving a certain place; prohibited from being involved in certain activities, etc.

**(b) How and when can I apply for release while waiting for trial?**

If you are in custody or under house arrest, your detention pending trial will be reviewed every three months. If there are changes in your circumstances between two reviews, your lawyer can make an application for release. The decision to release you is at the discretion of the court and each application is considered on its merits.

Release pending trial is rarely granted for serious offences, such as drug trafficking or serious fraud.

**(c) How long can I be kept in prison before my trial starts?**

The average length of pre-trial detention in Portugal is eight months. However, approximately 20 per cent of people on pre-trial detention spend more than one year in prison. Lengthy periods of pre-trial detention are common in Portugal and are a result of delayed investigations and inefficiency.

The maximum period of detention authorised by law prior to trial is two years and six months (or three years if there was an appeal to the Constitutional Court or the case has been suspended due to a prejudicial question submitted to another court), where the case is particularly complex and involves serious crimes. If a trial decision has not been handed down within this period, you must be released. Make sure you let your lawyer know if no trial date is set for you after two and a half years.

**(d) Can I go back to my home country if I have been released pending my trial?**

Unless you have been expressly forbidden to do so, you may leave the country while on bail.

Please note that you must inform the court of any changes to your address in writing by recorded mail. If you do not inform the court of your new address, the court may validly serve you with all documents at your previous address and you may be validly tried in your absence.

**(e) What will happen if I breach the conditions of my release?**

More restrictive measures, including in certain cases imprisonment, may be applied.

**(f) Do I need a lawyer to apply for release?**

Yes

**Q6. HOW LONG BEFORE MY CASE GOES TO TRIAL?**

It generally takes six to 18 months for a case to be brought to trial.

There are deadlines for concluding the investigation, which go up to one year after the moment at which you were declared a suspect. After these deadlines have expired, you may request for an acceleration of proceedings.

In most serious cases it can take years for cases to go to trial.

Remember that you cannot be kept in pre-trial detention for more than two and half years (in most serious cases only, or three years if there was an appeal to the Constitutional Court or the case has been suspended due to a prejudicial question submitted to another court), even if it takes longer for your case to go to trial. If you are still in detention after the maximum period of pre-trial detention and no date has yet been set for your trial, make sure you remind your lawyer that he should challenge your detention. If such a deadline has elapsed you may also present a petition of *habeas corpus* to the Supreme Court directly. You do not need a lawyer to sign this petition.

**(a) There are always delays with my case, does that mean my lawyer is doing a bad job?**

Delays are common in the Portuguese criminal justice system; this is not necessarily the fault of your lawyer. The police or prosecution agencies may need additional time to collect evidence and locate witnesses, as may the defence team.

You should expect further delays during the legal recess, or holiday, (July 15 to August 31), when only urgent cases will be heard.

**Q7. CAN I PLEAD GUILTY? WHAT ARE THE CONSEQUENCES OF PLEADING GUILTY?**

There is no system of plea bargain in Portugal (i.e. you cannot make a deal with the prosecutor and offer to confess your guilt in exchange for a lesser sentence). However, if you confess your guilt and show regret for what you have done, this can be taken into account by the court when it makes a decision on your sentence.

If you acknowledge your guilt (i.e. you give a confession in open court and decide not to challenge the accusations made against you), and all of the following criteria are met:

1. The crime is punishable with a prison sentence of a maximum of five years;
2. The judge has no reason to believe that the confession hasn't been made freely ;
3. The judge has no reason to believe that you are not responsible for your acts;
4. The judge has no reason to suspect that the admission is untrue; and
5. If there are co-defendants, all must plead guilty;

in such cases, there will be fewer court costs, no evidence has to be produced on the facts and the proceedings will take less time.

If the above criteria are not met, the trial will go on and the judge will determine whether it is necessary to produce evidence on the facts to which you have pleaded guilty.

## **Q8. WHAT HAPPENS AT TRIAL?**

In general, trials are public.

Defendants have the right to be present at their trial and to consult with a lawyer. They can confront and question witnesses against them, present evidence on their own behalf, and have access to government-held evidence.

### **(a) Do I have to be present?**

You have both an obligation and the right to be present. If you do not appear in court, the court may conduct your trial in your absence as long as you have been informed of your the trial date.

If the court finds that your presence is absolutely necessary, an arrest warrant may be issued. European Arrest Warrants (EAW) should only be issued if your pre-trial detention has either been ordered, or if it could be ordered, but there are cases in which EAWs have been issued even if that was not the case. Similarly, extradition pending trial should only be requested if pre-trial detention has been imposed or will foreseeably be imposed. You may waive the right to be present, and give your lawyer powers to represent you, in particular when it would be very difficult for you to attend.

### **(b) Can I ask for the trial to take place in my home country?**

No.

### **(c) Is there a jury?**

Jury trials are rare in criminal cases.

When the crime in question is punishable by a prison sentence with a maximum limit of more than eight years, either the public prosecutor, the victim or the defendant may request a jury trial. Juries consist of three judges (*juizes de direito*) and four jurors (*jurados*, who are Portuguese nationals, aged 18-65, and who are registered voters).

There are no jury trials for terrorism or serious organised crime cases.

### **(d) Can my lawyer call and cross-examine witnesses?**

Yes, your lawyer can call witnesses. S/he can also cross-examine the witnesses and present evidence on your behalf.

### **(e) I don't speak the language of the court, do I have a right to an interpreter? Is it free?**

Yes, you have the right to an interpreter and it is free of charge.

### **(f) Will the written evidence be translated for me?**

The submission of evidence is acceptable only in the Portuguese language. There is no right to have the evidence translated into your language.

You can, however, make an application to the court if you need very important evidence to be translated. The decision is at the discretion of the court, but if the court accepts, you will not have to pay for it.

**(g) Will the interpreter also help me if I need to talk to my lawyer?**

Yes, but when possible you should try to find a lawyer who speaks your language.

**(h) Why is the victim taking part in the trial?**

Victims are often called as witnesses. If the alleged offence has caused damages to the victim, the criminal court can order damages to be paid to the victim without the need for a separate legal case in the civil courts. For this reason, victims often decide to take an active (although limited) part in the trial, but they have no obligation to do so. Victims may also have an active role in the criminal case, and they are allowed to call witnesses, examine and cross-examine witnesses and appeal against decisions, independently of the Public Prosecutor.

**(i) Will I be informed of the decision of the court on the day of the trial?**

This only happens in fast track trials.

**(j) Can I receive a copy of the judgment in my mother tongue?**

You have a right to receive, in reasonable time, a translation of the judgment.

**(k) I was tried in my absence and was not informed of this, what can I do?**

There are two kinds of trials *in absentia* (trials that take place in the absence of the accused).

If you have never been interrogated and have not signed a statement of identity and residence, you cannot be tried in your absence. You will nevertheless be declared absent (*contumaz*) and the proceedings will be suspended until you present yourself in court. Arrest warrants and extradition requests may be issued in these cases.

If you have signed a statement of identity and residence you will be summoned by regular mail, without proof of receipt, to the address you gave on the statement of identity and residence. If you do not appear in court you may be tried in your absence. Even if you have been tried in your absence, the judgment must be notified to you.

After the notification of the judgment you may appeal the decision. If you were not aware of your trial, tell your lawyer to verify whether your trial *in absentia* was conducted regularly.

**Q9. I AM NOT HAPPY WITH THE DECISION, CAN I APPEAL AGAINST IT? HOW DO I APPEAL?**

Yes, you can appeal against either your conviction or your sentence. The appeal must be submitted by your lawyer. In general you must lodge your appeal within 30 days. After 30 days, your sentence will become final.

**(a) Do I need to pay my lawyer more money if there is an appeal?**

You should always consult your legal adviser for an estimate of the costs of an appeal as this is usually not included in the fees you have paid at the outset. Legal aid is available at the appeal stage.

**(b) What is the time frame for the appeal to take place?**

Appeals are usually heard by the court of appeal within three to 12 or even 18 months. It will depend on several factors, including the complexity of the case, whether or not you are in pre-trial detention, how busy the courts are, for example.

**(c) Could things get worse during the appeal? If I am acquitted, can the prosecution appeal?**

If the appeal was lodged only by you, the outcome cannot get worse.

If the appeal has been lodged by the victim or the prosecutor against you, the outcome can be worse.

The public prosecutor may appeal if s/he considers that the conviction is too lenient or if s/he does not agree with an acquittal. The victim may also appeal from an acquittal.

**Q10. I HAVE EXHAUSTED ALL LEGAL REMEDIES. WHAT OPTIONS DO I HAVE?**

**(a) Is it possible to get my case reviewed?**

A court case may be reopened following conviction if:

- There is contradiction in the court decision that raises serious doubts on the fairness of the conviction;
- There are false statements, declarations and documents leading to a “guilty” verdict that has been recognised by a judicial decision;
- The accused is convicted on the basis of corruption or bribery of the judge and/or jury;
- New facts or exhibits have come to light showing a strong possibility of innocence;
- If it is discovered that forbidden evidence has been used for the conviction (i.e. evidence obtained by torture, etc.);
- The Constitutional Court decides that the law on which the decision is based violates the Constitution; and
- If there is a binding judgment for Portugal by an international court that is contrary to the conviction, or raises serious doubts on its fairness.

If you think that this can apply to you, then speak to your lawyer and ask him/her for more information, including information on the court that may be competent to review your case.

It is also possible to have your case reopened in certain situations, if there are subsequent changes to the law.

**(b) Can I apply for a pardon?**

Yes, you can do this by writing to the President. This can be done every year until June 30 and the President’s decision will be handed down around Christmas time.

Pardons are rarely granted in practice.

**Q11. WHAT RIGHTS DO I HAVE AS A PRISONER?**

**(a) Do I have rights as a prisoner? Where can I find out about my rights?**

Each prisoner is assigned a prison social worker (*técnico de reeducação*) who may help with any problems and give general advice. Your social worker can inform you of your rights as a prisoner and monitor your progress. They can also arrange your visits from family and friends.

**(b) What can I do if my rights are violated? Where can I get assistance regarding my welfare issues, regarding abuse and mistreatment?**

Your prison social worker should be your first port of call if you have a specific problem or request. They can also contact your consulate on your behalf.

You can also ask for a legal aid lawyer – the prison social worker has the necessary forms to do so.

The government investigates and monitors prison and detention centre conditions. Authorities permit prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigations of allegations of inhumane conditions.

Authorities investigate believable allegations of inhumane conditions and document the results of such investigations in a publicly accessible manner.

You can complain to the following bodies if your rights are violated:

- The Directorate-General of Prison Services (*Direcção-Geral dos Serviços Prisionais*);
- The Ombudsman (*Provedor de Justiça*);
- The Human Rights Commission of the Law Bar Association (*Comissão de Direitos Humanos da Ordem dos Advogados*).

**Q12. CAN I GET MY SENTENCE REDUCED?**

There is no reduction of sentence under the Portuguese judicial system, but you can get an early release.

Early release is generally discretionary and is not an entitlement. It is decided entirely by the parole judge (*juiz do tribunal de execucao de penas*) who presides over the local committee reviewing prison sentences, on the basis of information supplied by the prison authorities.

After your conviction becomes final, you will receive a notification from court (*liquidação da pena*) with the calculation of your prison time, including the dates relevant for early release.

You may be considered for early release once you have served half of your sentence or, if not granted at this point, after you have completed two thirds. In practice, those convicted of serious crimes are unlikely to be released at the first request for a release pending trial, whenever this may be.

For those sentenced to more than six years imprisonment, there will always be early release after completing five-sixths of the sentence.

The time served in pre-trial detention will be considered as part of your sentence. If you have been in pre-trial detention in another case, and you were subsequently acquitted, that time will also be discounted in your sentence. You should inform your lawyer if you have been in such a situation.

**(a) What would help me get an early release?**

Your prison social worker can draw up a report on your behaviour for the parole judge to consider when you become eligible for early release. Factors such as good behaviour, involvement in education, evidence of somewhere to live, a job to go to if release is granted, or ill health (generally terminal stages of a serious and incurable disease) are taken into account.

You may find it useful to take Portuguese language lessons, if available, to increase your chances of working in prison and to help you to better understand what is happening around you.

You can ask your lawyer (or ask for a legal aid lawyer if you have no lawyer) to draft requests for early release. The involvement of a lawyer may help you.

**(b) I have been sentenced to pay a fine, what will happen if I don't pay it?**

Unless you prove that you did not pay because you have absolutely no financial means to do so, you will have to serve a prison sentence instead.

**Q13. CAN I GO BACK TO MY HOME COUNTRY?**

**(a) Can I serve my prison sentence in my home country?**

If there is an agreement in place between Portugal and your home country, you can apply for a transfer. Transfers are usually at the discretion of the two countries involved. You should make an application at the earliest opportunity as applying for a transfer is likely to be a lengthy process.

**(b) Can I be expelled instead of serving my sentence?**

Yes, but only after you have served half of your sentence (for sentences up to 5 years imprisonment) or two thirds of your sentence (for sentences over 5 years imprisonment). In certain cases, expulsion could take place one third of the sentence (for sentences up to 5 years imprisonment) or after half of the sentence (for sentences over 5 years imprisonment).

**(c) Is there a risk that I will be deported after serving my sentence?**

Yes, if the judgment also made an expulsion order, or if you do not have a valid residence permit.

## USEFUL LINKS

ORGANISATION	MANDATE	CONTACT DETAILS
<b>LAW GOVERNING BODIES / LAWYERS' ORGANISATIONS</b>		
<p><b>Ordem dos Advogados Portugueses</b></p> <p><i>Portuguese Bar Association</i></p> <p>and its</p> <p><b>Comissão de Direitos Humanos</b></p> <p><i>Human Rights Commission</i></p>	<p>The Ordem dos Advogados (OA) / Portuguese Bar Association, was established by Decree n.º 11 715, of 12 June 1926. However, its origins trace back to the Lisbon Lawyers Association, whose Statutes were approved in 1838. Membership is compulsory for all practicing and trainee lawyers.</p> <p>The Bar Association, through the Deontology Councils (first instance) and the Superior Council, has exclusive disciplinary jurisdiction over lawyers and trainee lawyers. The Bar Association's disciplinary powers derive from the Law (the Bar Association Statute). Lawyers can appeal against the rulings of the Bar Association to Administrative Courts.</p> <p>They have a Commission in charge of Human Rights, which can hear complaints about your detention conditions or welfare issues in prison.</p> <p><u>Languages:</u> Portuguese</p>	<p>Website: <a href="http://www.oa.pt">www.oa.pt</a></p> <p>E: <a href="mailto:cons.geral@cg.oa.pt">cons.geral@cg.oa.pt</a></p> <p>Human Rights Commission (Comissão de Direitos Humanos): <a href="mailto:com.direitoshumanos@cg.oa.pt">com.direitoshumanos@cg.oa.pt</a></p> <p>T: +351 (0)21 882 3550 F: +351 (0)21 8862403</p> <p>Largo De São Domingos, 14-1º 1169-060, Lisboa</p>
<p><b>Forum Penal, Associação de Advogados Penalistas</b></p> <p><i>Association of Criminal Lawyers</i></p>	<p>Forum Penal is an association of criminal lawyers in Portugal, who work to influence laws and policies affecting criminal justice, and provide spaces in which criminal lawyers can share ideas and experiences.</p> <p><u>Languages:</u> Portuguese</p>	<p>Website: <a href="http://www.forumpenal.pt">www.forumpenal.pt</a></p> <p>E: <a href="mailto:forum@forumpenal.pt">forum@forumpenal.pt</a></p> <p>T: +351 (0)21 7106160</p> <p>Rua dos Anjos, 79 1150-035, Lisboa</p>
<b>OMBUDSMAN</b>		
<p><b>Provedor de Justiça</b></p> <p><i>The Portuguese Ombudsman</i></p>	<p>The Portuguese Ombudsman derives its power from the Portuguese Constitution (Art 23) and statute (Law 9/91 of 9 April). His duty is protect citizen's fundamental rights and support all those whose complaints and claims are have a legal basis. The Portuguese Ombudsman can request the Constitutional court make generally binding rulings on un/constitutionality or illegality and public administration issues. He is also charges with the protection of human rights.</p> <p>An ombudsman can serve on behalf of prisoners and detainees to consider such matters as alternatives to incarceration for nonviolent offenders to alleviate overcrowding; addressing the status and circumstances of confinement of juvenile offenders; and improving pre-trial detention, bail, and record keeping procedures to provide assurance that prisoners do not serve beyond the maximum sentence for the charged offence. He has the power to visit prisons with or without prior notice.</p> <p>A person can complain to the Ombudsman orally or in writing or online.</p> <p><u>Languages:</u> Portuguese.</p>	<p>Website: <a href="http://www.provedor-jus.pt">www.provedor-jus.pt</a></p> <p>E: <a href="mailto:provedor@provedor-jus.pt">provedor@provedor-jus.pt</a></p> <p>T : +351 (0)213 926 600 F : +351 (0)213 961 243</p> <p>Rua Pau de Bandeira, 7-9, 1249-088 Lisboa.</p> <p>There are local offices in The Azores and in Madeira – addresses available on the website</p>
<b>NGOs</b>		
<b>LEGAL ADVICE</b>		
<p><b>Observatório Permanente da Justiça Portuguesa</b></p> <p><i>The Permanent Observatory of Portuguese Justice (OPJ)</i></p>	<p>The Permanent Observatory of Portuguese Justice (OPJ) is based at the Centre for Social Studies (CES), School of Economics, University of Coimbra, since 1996.</p> <p>It conducts researches on the functioning of the courts and the perception and evaluation of the Portuguese on the law and justice. It is currently integrated into the Centre for the Study of Democracy,</p>	<p>Website: <a href="http://opj.ces.uc.pt/">opj.ces.uc.pt/</a></p> <p>E: <a href="mailto:opj@ces.uc.pt">opj@ces.uc.pt</a></p> <p>T: +351 (0)239 85 55 70 F: +351 (0)239 85 55 89</p>

	<p>Citizenship and Law and the Centre for Social Studies. The Centre's main objective to monitor and analyze the performance of courts and other institutions and activities related thereto, as the police, prisons, probation services, systems expertise and forensic medical system, the legal professions and alternative systems of dispute resolution.</p> <p>Its job is to also assess the reforms introduced, suggest new reforms and to comparative studies, both inside and outside the European Union. Studies of opinion on the law and justice are also part of its objectives.</p> <p><u>Languages:</u> Portuguese</p>	<p>Colégio de S. Jerónimo Apartado 3087 3000-995 Coimbra</p>
<b>HUMAN RIGHTS</b>		
<p><b>Associação de Defesa dos Direitos Humanos (ADDHU)</b></p> <p><i>Association for the Defence of Human Rights</i></p>	<p>ADDHU is an International NGO, registered and accredited by the Portuguese Institute for Development, Ministry of Foreign Affairs, as an NGO for Development and a Public Utility Institution, according to the articles 8th and 12th, Law 66/98, 14th October. Its main fields of action are human rights defence and advocacy, humanitarian relief and cooperation for development.</p> <p><u>Languages:</u> Portuguese and English</p>	<p>Website: <a href="http://www.addhu.org">www.addhu.org</a></p> <p>E: <a href="mailto:info@addhu.org">info@addhu.org</a></p> <p>T: +351 (0)962 904 738</p> <p>Av. Nuno Alvares Pereira, nº 33 2765-260 Estoril</p>
<p><b>Plataforma Portuguesa para os Direitos das Mulheres</b></p> <p><i>Portuguese Platform for Women's Rights</i></p>	<p>The Portuguese Platform for Women's Rights is a social, cultural and humanist non-governmental organisation, independent from political parties, religious institutions or governmental structures, whose members are women's rights NGOs. It was created on November 12th 2004 and its main objective is to foster cooperation for collective reflection and action in the promotion of women's rights and gender equality through several means, such as research, lobbying, dissemination of information, awareness-raising and training.</p> <p><u>Languages:</u> Portuguese, English and French</p>	<p>Website: <a href="http://www.plataformamulheres.org.pt">www.plataformamulheres.org.pt</a></p> <p>E: <a href="mailto:plataforma@plataformamulheres.org.pt">plataforma@plataformamulheres.org.pt</a></p> <p>T: +351 (0)21 362 60 49</p> <p>Centro Maria Alzira Lemos - Casa das Associações Parque Infantil do Alvito, Estrada do Alvito, Monsanto 1300-054 Lisboa</p>
<p><b>Amnistia Portugal</b></p> <p><i>Amnistia Internacional (Portugal)</i></p>	<p>Amnesty International is a campaigning organisation. Its aim is to protect people wherever justice, fairness, freedom and truth are denied.</p> <p><u>Languages:</u> Portuguese</p>	<p>Website: <a href="http://www.amnistia-internacional.pt">www.amnistia-internacional.pt</a></p> <p>E: <a href="mailto:aiportugal@amnistia-internacional.pt">aiportugal@amnistia-internacional.pt</a></p> <p>T: +351 (0)21 386 1664 F: +351 (0)21 386 1782</p> <p>Rua dos Remolares, 7-2 1200-370 Lisboa</p>
<b>PRISONER WELFARE</b>		
<p><b>O Companheiro</b></p> <p><i>The Fellowship</i></p>	<p>From experience gained over 23 years, The Fellowship believes that the occupation including employment training, helps to break down barriers of stigma and social exclusion by ensuring that prisoners and former prisoners are not excluded from access to the duties / rights and features common to all.</p> <p>It aims to assist prisoners and ex-offenders prepare themselves for life once released and assist them on the outside.</p> <p><u>Languages:</u> Portuguese</p>	<p>Website: <a href="http://www.companheiro.org">www.companheiro.org</a></p> <p>E: <a href="mailto:geral@companheiro.org">geral@companheiro.org</a> T: +351 (0)21 716 00 18/69 F: +351 (0)21 715 57 57</p> <p>Av. Marechal Teixeira Rebelo, 1500-424, Benfica</p>
<p><b>Prison Fellowship Portugal</b></p>	<p>Prison Fellowship Portugal was founded in 1992 and currently provides outreach in 30 prisons. Dedicated volunteers make programmes possible, including vocational training for inmates, and children and youth services for their families. PF Portugal continues to reform and rehabilitate inmates with the help of Christ.</p>	<p>Website: <a href="http://www.fiar-linho.blogspot.com">www.fiar-linho.blogspot.com</a></p> <p>E: <a href="mailto:fiar_2003@sapo.pt">fiar_2003@sapo.pt</a> <a href="mailto:fiar.linho@gmail.com">fiar.linho@gmail.com</a></p>

	<u>Languages:</u> Portuguese	T: +351 (0)21 924 2326 F: +351 (0)21 924 2326  Bairro Do. E.P. Linho Casa 13, Alcabideche, 2645-002
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Fair Trials would like to thank the law firms and individual practitioners including **Vania Costa Ramos**, who have generously given their time and expertise to help produce these legal guidance notes.

For a full list of our funders see  
[www.fairtrials.org/get-involved/supporters/](http://www.fairtrials.org/get-involved/supporters/)





Fair Trials aims to help people accused of crimes to understand and exercise their fair trial rights by providing information and referrals. We do not charge for any of our assistance.

If you complete this form, we may be able to:

- Send you general information, including advice about the local legal system that could be helpful to you;
- Provide answers to any specific questions you might have; and
- Refer you to local sources of support (for example, referrals to local lawyers, if appropriate).

**We cannot provide any legal advice or representation that is specific to your case, and we are also unable to provide any welfare support or financial assistance.**

Please fill out this form and send it back to:

By Post: Fair Trials, Temple Chambers, 3/7 Temple Avenue, London, EC4Y 0HP, United Kingdom  
By Fax: +44 (0)20 7822 2371

All information will be treated confidentially, and in accordance with our privacy notice set out overleaf.

**A) Personal Information**

Full Name	
Nationality	
Your current address (your prison address, if you are in custody)	
Prisoner Number (if applicable)	

**B) Legal Representation**

Would you like referrals to local lawyers?    Yes                       No

Are you able to pay for a lawyer?              Yes                       No

Depending on the country, you may not be able to choose your own specific lawyer, if you cannot pay for one.

**C) Fair Trials**

How did you hear about us?	
How did you receive this form?	
If you have already seen any of our materials (e.g. 'Arrested – Practical Guidance'), please let us know, and tell us which you have seen.	

**D) Further Information / Questions**

We have printed materials on a range of topics where we are most often asked for help. Please tick on any of the following topics on which you would like further information.

- |  |                          |   |                          |
|--|--------------------------|---|--------------------------|
| <i>Applying for Release Pending Trial</i>  | <input type="checkbox"/> | <i>Prisoner Transfers</i>                     | <input type="checkbox"/> |
| <i>The European Arrest Warrant ('EAW')</i> | <input type="checkbox"/> | <i>Criminal Records in the European Union</i> | <input type="checkbox"/> |
| <i>INTERPOL Red Notices</i>                | <input type="checkbox"/> |   |                          |

Use the space below to:

- Request clarifications on any information from us that you have already seen;
- Highlight any specific information, or referrals that you believe could be helpful to you; and
- Give us feedback or comments

Please be specific with any questions or requests you have.

**E) Nominated Contact**

It can sometimes be difficult for Fair Trials get in touch directly with people in prison. In such cases, it can be helpful if we are provided with the name and contact of a family member or a friend whom you are happy to nominate as Fair Trials' point of contact. Please provide their details below:

Full Name: ..... Relationship to you: .....

Address: .....

Telephone: ..... Email: .....

**F) Privacy Notice**

We collect information about you when you complete and return this form. We use this information to assist you and otherwise provide support in relation to your case. Fair Trials will retain your information for up to six years after: 1) if we are notified about the end of your legal proceedings, from the date of notification; or 2) if we are not notified, the date of the last correspondence with you about your case. For more information about how we handle your personal information, please see the privacy policy on our website ([www.fairtrials.org/privacy-policy](http://www.fairtrials.org/privacy-policy)). Please sign here to confirm that you have read and agree to the Privacy Notice in this form.

Full Name: ..... Signature: .....