



40 YEARS OF RULINGS

HISTORIC LANDMARKS

The 1980s

Ruling no. 11/83 (12 October 1983)

The Court declared that there is no blanket constitutional prohibition on retroactive fiscal legislation. The Court also noted that, in extraordinary circumstances such as those arising in a financial crisis, public interest considerations may prevail over considerations of security and legal certainty.

Ruling no. 25/84 (19 March 1984)

The Court did not declare the non-criminalisation of abortion in clearly identified types of cases unconstitutional. The jurisprudence of the Court has reiterated that, though constitutionally protected, the human embryo or foetus does not have an identical legal status to that of a fully formed human person.

Ruling no. 39/84 (11 April 1984)

The Court decided that the extinction of the national health service would be unconstitutional. It noted that the Constitution goes beyond affirming a general right to health. It establishes a duty on the state to offer citizens a specific array of healthcare services. The existence of the national health service is thus a necessary condition for the exercise by each individual citizen of their constitutionally protected right to health.

Ruling no. 423/87 (27 October 1987)

The Court declared that the Constitution does not prohibit equal state school provision of religious education in every faith.

Ruling no. 130/88 (8 June 1988)

The Court did not declare unconstitutional a legal provision which authorises physicians to harvest the organs of deceased patients without prior consent of their next of kin.

Ruling no. 187/88 (17 August 1988)

The Court did not declare unconstitutional the provisions of the Portuguese Agrarian Reform Act. One of the questions for the Court was whether the aims of the Act were in conflict with the aims to be pursued by any national agrarian policy, according to the Constitution. The Court concluded there was no conflict.

Ruling no. 182/89 (1 February 1989)

In a rare declaration of unconstitutionality by omission, the Court decided that the guaranteed protection of personal data kept in electronic form was possible only through the enactment of specific legislative provisions clearly defining the term 'personal data'.

The 1990s

Ruling no. 71/90 (21 March 1990)



The Court declared that the legal framework regulating privatisations in Portugal was not unconstitutional.

Ruling no. 359/91 (9 July 1991)

The Court declared unconstitutional a Supreme Court ruling for breach of the principle of non-discrimination between children born in and out of wedlock. At issue was the consideration of the interests of children in the attribution of the right to let the family home.

Ruling no. 289/92 (2 September 1992)

The Court decided the scrutinised provisions of a statute regulating the exercise of the right to strike were not unconstitutional. It also did not find fault with the provision which created a duty for the Government to establish essential services and minimum service levels in different sectors.

Ruling no. 174/93 (17 February 1993)

The Court considered legal provisions that regulated the teaching of Catholic Religious Education in primary schools, and in teacher training colleges and teacher training centres. The Court decided that the principle of separation between Church and State does not exclude any collaboration between the State and the Catholic Church. Collaboration with the aim of ensuring religious freedom is constitutionally legitimate, as long as the State is not responsible for the teaching.

Ruling no. 748/93 (23 November 1993)

The Court declared unconstitutional the provisions contained in several electoral laws which automatically linked active electoral incapacity to the nature of the crimes committed (intentional crimes or infamous intentional crimes) and to the nature of the penalty applied (imprisonment) while the corresponding sentence had not been fully served.

Ruling no 148/94 (8 February 1994)

The Court declared the unconstitutionality of a provision that regulated the setting of the amount of fees in public higher education. The principle of a progressively free public higher education, provided in the Constitution, does not allow the legislator to fix a registration fee in an amount equal to that of the tuition fees.

Ruling no. 339/95 (22 June 1995)

The Court concluded that an order rejecting a request by a foreign citizen for legal aid to appeal against a refusal of asylum was contrary to the general principle of equality between nationals and foreigners or stateless persons, and breached the principle of equality, as well as the guarantee of access to the courts and the right to legal representation.

Ruling no. 640/95 (15 November 1995)

The Court declared that a provision concerning the updating of the toll charge payable on the bridge over the Tagus River was not unconstitutional since it "did not establish a manifestly unfair, flagrant and intolerably unacceptable treatment in a democratic state".

Ruling no. 1146/96 (12 November 1996)

The Court declared the unconstitutionality of a rule, in force in the territory of Macau, which allowed the extradition for crimes punishable in the requesting State with the death penalty. The Court considered that "extradition is only allowed if, according to the domestic law of the requesting State, the sentence applicable or already applied to the case is not the death penalty". The death penalty is not compatible with our Constitution, even when the State requesting the extradition offers guarantees that it will not be applied.



Ruling no. 118/97 (10 February 1997)

The Court declared the unconstitutionality of a provision that denied trade unions standing to initiate an administrative procedure and to intervene in it, either in defence of collective interests or in the collective defence of individual interests of the workers they represent.

Ruling no. 532/98 (19 July 1998)

The Court declared that the referendum on the institution of administrative regions was legal and not unconstitutional. It concluded that the questions met the legally established requirements of objectivity, clarity, precision and bipolarity. It also concluded that the questions did not imply any of the possible answers.

The 2000s

Ruling no. 474/02 (19 November 2002)

The Court considered unconstitutional the lack of legislative measures necessary for the protection of all workers in cases of involuntary unemployment. Only workers bound by the legal framework of individual employment contracts were entitled to unemployment benefits, and not public-sector workers.

Ruling no. 640/95 (15 November 1995)

The Court deemed unconstitutional a provision on the right to social integration income. The Court stated that the value of human dignity and the principle of the rule of law guarantee everyone the right to social security, and entrust the social security system with the protection of citizens in cases of lack or reduction of means of subsistence or work capacity. The Constitutional Court hereby upheld the right to basic subsistence.

Ruling no. 304/03 (18 March 2003)

The Court declared that the provision that approved the Political Parties Act was not unconstitutional. However, it deemed two other provisions unconstitutional, for violating freedom of association and the principle according to which a criminal sentence cannot entail, as a necessary effect, the loss of civil, professional or political rights.

Ruling no. 704/04 (17 December 2004)

The Court deemed that the proposal for the referendum on the Constitution for Europe did not comply with the requirements of clarity and a yes-or-no format demanded by Articles 115(6) of the Portuguese Constitution, and 7(2) of the Organic Law on Referenda.

Ruling no. 23/06 (10 January 2006)

The provision establishing a two-year time limit from the age of majority of the person whose paternity is under investigation for the expiry of the right to investigate that person's paternity was deemed unconstitutional.

The 2010s

Ruling no. 121/10 (8 April 2010)

The Court considered that the provisions allowing civil marriage between same-sex people were not unconstitutional.



Ruling no. 396/11 (21 September 2011)

The Court did not deem unconstitutional Articles 19, 20 and 21 of Law no. 55-A/2010, of 31 December (State Budget Law for 2011) concerning the reduction of salaries of workers.

Ruling no. 176/14 (19 February 2014)

The Court considered that the referendum proposed in Parliament Resolution no. 6-A/2014, of 20 January, on the possibility of adoption by the spouse or civil law partner of the same sex and on the possibility of adoption by same-sex couples, either married or in a civil union, was neither constitutional nor legal.

Ruling no. 413/14 (30 May 2014)

The Court decided to declare unconstitutional Article 33 of Law no. 843-C/2013, of 31 December (State Budget Law for 2014), which reduced the salaries of public-sector workers, and which restricted the effects of this decision for reasons of exceptionally relevant public interest.

Ruling no. 141/15 (25 February 2015)

The Court declared the unconstitutionality of Article 6(1)(a) of Law no. 13/2003, of 21 May, which required a minimum of one year of legal residence in Portugal in order for Portuguese citizens to be entitled to social integration income; it also declared unconstitutional Article 6(4) of that Law, which extended the requirement of a minimum of one year of legal residence in Portugal to members of the household of the person applying for social integration income.

Ruling no. 377/15 (27 July 2015)

The Court deemed unconstitutional Articles 1(1) and 2 of Decree no. 369/XX of the Parliament (crime of unjustified enrichment).

Ruling no. 225/18 (24 April 2018)

The Court deemed unconstitutional the provisions of Law no. 32/2006, of 26 July, which allowed gestational surrogacy (exceptionally and subject to prior authorization); which did not allow the revocation of consent on the part of the gestational surrogate up to the delivery of the child to the beneficiaries; and which created an obligation of absolute secrecy regarding the people born as a result of a medically assisted reproduction using donated gametes or embryos, including in gestational surrogacy cases, concerning the use of those procedures or gestational surrogacy and concerning the identity of the participants in those procedures as donors or as gestational surrogates.

Ruling no. 595/18 (20 September 2018)

The Court deemed unconstitutional the provision establishing the impossibility of appeal of a decision of the Court of Appeal which, following an acquittal by the court of first instance, sentenced the defendants to an effective prison sentence of no more than five years, contained in Article 400(1)(e) of the Criminal Procedure Code, as amended by Law no. 20/2013, of 21 February.

Ruling no. 464/19 (18 September 2019)

The Court deemed unconstitutional the provision contained in Article 3 of Organic Law no. 4/2017, of 25 August, allowing access by the intelligence officers of the National Security Information Service (SIS) and of the National Strategic Information and Defence Service (SIED) to data bases and data concerning device location, when not connected to a specific communication, for producing information necessary for the safeguard of national defence and homeland security; the Court did not deem unconstitutional the provision contained in Article 3 of Organic Law no. 4/2017, of 25 August, allowing access by the intelligence officers above to data bases and data concerning device



location, when not connected to a specific communication, for producing information necessary for the prevention of acts de sabotage, espionage, terrorism, proliferation of weapons of mass destruction and organized crime; the Court declared unconstitutional Article 4 of Organic Law no. 4/2017, of 25 August, as regards access to traffic data involving interpersonal communication and access to traffic data not involving interpersonal communication.

The 2020s

Ruling no. 424/2020 (31 July 2020)

The Court deemed unconstitutional provisions approved by the Regional Government of the Autonomous Region of the Azores which established administrative measures meant to address the public health crisis resulting from the Covid-19 epidemic – more specifically, a 14-day mandatory quarantine in a hotel on all passengers landing in the Azores -, because those provisions entailed a deprivation of freedom.

Ruling no. 115/2021 (4 February 2021)

This ruling discussed the possibility of a landlord preventing the renewal of a lease, thereby recovering possession of the leased property of which he was the owner. The Court, considering the particular features of the shop located in the leased property – a shop of great historical relevance –, deemed that the compression of freedom of contract in certain commercial leases, allowing the tenant to remain in the leased estate beyond the time intended by the landlord, is justified. The preservation of those shops deserves constitutional protection; the legislative measure under discussion, aimed at protecting “Historical Shops”, also corresponds to the public interests protected by Article 66(2)(e) of the Constitution.

Ruling no. 123/21 (15 March 2021)

The Court analysed the question of whether the inviolability of human life enshrined in Article 24(1) of the Constitution is an unsurmountable obstacle to medically assisted dying under specific conditions. The Court was of the opinion that the right to live cannot be transformed into a duty to live under whatever circumstances, admitting that “the tension between the duty to protect life and respect for personal autonomy in cases of extreme suffering may be resolved through political and legislative solutions adopted by the democratically elected representatives of the people such as the anticipation of medically assisted dying at the request of the relevant person».

Ruling no. 474/2021 (29 June 2021)

The Court analysed the constitutionality of provisions concerning the adoption by the State of “measures within the educational system (...) promoting the exercise of the right to self-determination of gender identity and gender expression”. The Court concluded that the referred law concerned matters of rights, freedoms and guarantees, which are subject to the exclusive legislative powers of Parliament. Since those exclusive legislative powers cannot be delegated, the Court declared the referred provisions unconstitutional.

Ruling no. 545/21 (14 July 2021)

The Constitutional Court reviewed provisions which contained three types of measures: support related to the suspension of in-person school and after-school activities; exceptional support for families; and exceptional measures to counteract the forced reduction of economic activity and to encourage professional activity. The Court decided to declare the three measures unconstitutional, because they entailed an increased expenditure in that the financial year.

Ruling no. 921/21 (9 December 2021)



The Constitutional Court reviewed a provision of a Decree of the Presidency of the Council of Ministers which punished as a crime of disobedience the breach of mandatory lockdown. The Court had to decide whether that crime of disobedience was a new crime. Since the State of Siege and State of Emergency Act provides for a crime of disobedience when there is a “breach of the established in the declaration of the state of siege or of the state of emergency or in this law”, the Court concluded that the Government did not create a new crime by establishing that the breach of mandatory lockdown is a crime of disobedience. The Government did not, therefore, exceed its powers, and the provision was not therefore unconstitutional.

Ruling no. 83/22 (26 January 2022)

The case concerned provisions of Government Law no. 54/16, which amended the legal framework which protected the Iberian wolf. The Court stated that the Portuguese State is under an obligation to protect wild life and the natural environment, not only at the international and European levels, but also because the protection of nature and the environment is among the fundamental tasks of the State. The Court also mentioned that the protection of biodiversity and – in this specific case – the protection of the wolf, which is an endangered species, are contemplated in the Constitution, and are part of the wider right to the environment and the guarantee of nature conservation.

Ruling no. 133/2022 (15 February 2022)

In the legislative elections of 30 January 2022, ballot papers in one hundred and fifty-one polling stations that were part of the European constituency were declared invalid, because the voting ballots had not been sent together with a copy of the identification document of the relevant elector. This decision was appealed. The Constitutional Court considered that the votes sent by mail without a copy of the identification document of the elector being sent in the white envelope should be deemed invalid. Since it was not possible to separate the invalid votes from the valid ones, all ballot papers of the polling station where such anomalous procedures had been adopted (150,000 votes) were considered invalid. Invalidating votes that should have been counted had an impact on the overall result of the election in that constituency, in terms of the distribution of seats. Since it was impossible to effectively ascertain the ballot papers that should be deemed valid, the Court unanimously decided to revoke the decision to declare the ballot papers invalid, to declare the election in the polling stations of that constituency invalid and to have a new election in the relevant polling stations.

Ruling no. 268/22 (19 April 2022)

The Constitutional Court deemed unconstitutional the provisions that required providers of telecommunication and electronic communication services to keep all traffic and location data concerning all communications or communication attempts for a year, for possible future use in the prevention, investigation and repression of serious crimes. The Constitutional Court further declared unconstitutional the lack of notification of the relevant person that data had been accessed by the criminal investigation authorities after such notification could no longer risk the investigation or the life or physical integrity of any third parties.

Ruling no. 5/2023 (30 January 2023)

The Court analysed a new version of the law regarding medically assisted dying resulting from the amendments made by Parliament after the law was first deemed unconstitutional by the Constitutional Court (in Ruling no. 123/2021). The Court concluded that, since the legislator decided to characterize the type of suffering by listing three characteristics (“physical, psychological and spiritual”) connected by “and”, there are two plausible albeit opposite interpretations of this requirement. The legislator should have clarified whether the requirement was cumulative (physical suffering, plus psychological suffering, plus spiritual suffering) or alternative (either physical



suffering, or psychological suffering, or spiritual suffering). The Court concluded that this indefiniteness as to the exact scope of application of this new law was unacceptable.