



# PRESENTATION OF THE SUPREME ADMINISTRATIVE COURT

For 155 years the Supreme  
Administrative Court and for  
40 years the guarantor of  
citizens' rights



República Portuguesa

# A BRIEF HISTORICAL NOTE



1842

Historically, the control of administrative activity in Portugal has followed a model similar to that in France, based on the legality of administrative acts.

The current Supreme Administrative Court evolved from the Council of State, which was established in 1842 and first mentioned in the 1826 Constitutional Charter.

It was an advisory body, originally intended to serve the Monarch, and now serves the President of the Republic.

Due to the decisive influence of the French model, administrative litigation in Portugal was considered ineffective in ensuring citizens' rights, and its organisation and institutionalisation were not prioritised during the democratic revolution of 1974.

1974

1976

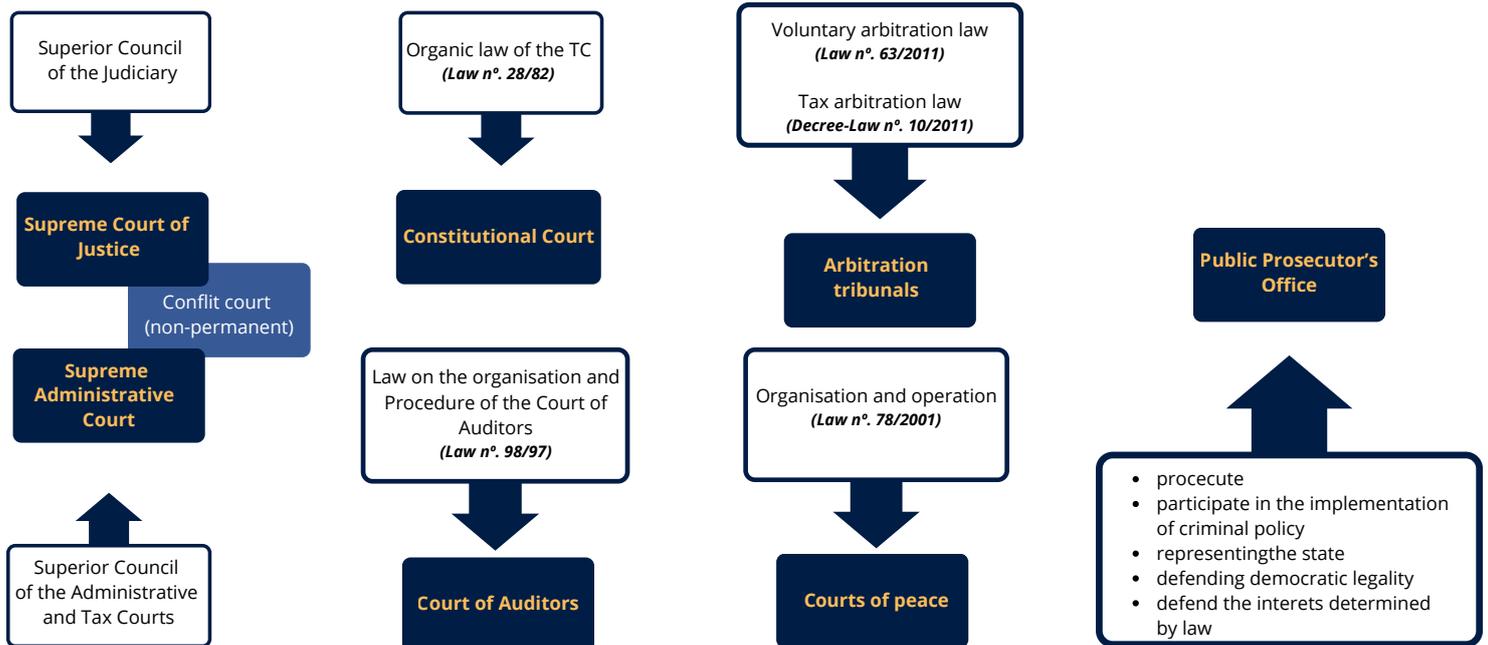
Although it has always maintained its autonomy, as evidenced by the 1984 statutes, it was not until the constitutional revision of 1989 that administrative and tax jurisdiction was incorporated into the Constitution of the Portuguese Republic of 1976 as an autonomous constitutional jurisdiction, alongside the judicial one (which includes civil, criminal and social matters).

In 2002, the new Statutes of the Administrative and Tax Courts came into force; in 2004, the administrative procedural reform that assured effective protection for citizens against administrative and public power was approved (the current Code of Procedure for Administrative Courts); and in 2023, the legal framework for this legislation was finally completed with the approval of the legal regime for the administrative and financial autonomy of the Superior Council of Administrative and Tax Courts.

2002

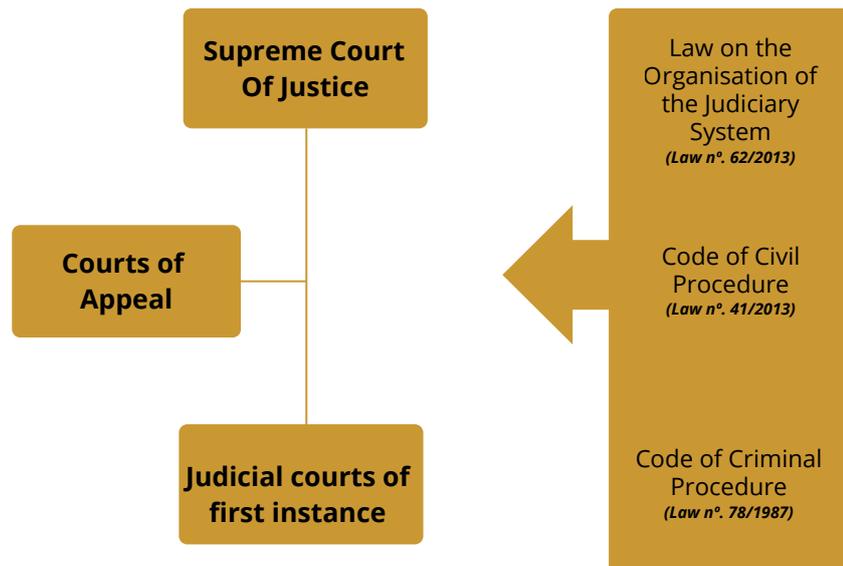
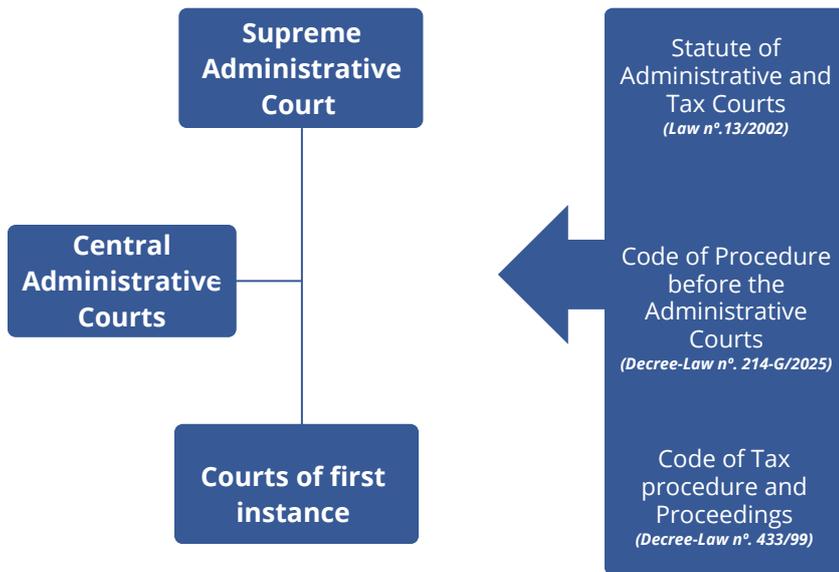


# PORTUGUESE JUDICIAL SYSTEM





# PORTUGUESE JUDICIAL ORGANISATION





# JURISDICTION FIGURES

Population covered: **10.344.802** inhabitants (2021 census)

## OVERALL NUMBER OF THE JUDICIARY

First-instance: 295

Second instance appellate: 71

Supreme Administrative Court (Justices): 24

## JURISDICTIONAL STRUCTURE

First-instance courts: 17

Central Administrative Courts (appellate): 2

Supreme Administrative Court: 1

## JURISDICTIONAL ACTIVITY

### First-instance

Annual average of cases lodged: 1,600 per court

Clearance rate: 123%

Average clearance times: 600 days

### Second instance

Annual average of cases lodged: 2,634 per court

Clearance rate: 89%

Average clearance times: 1,168 days

### Supreme Administrative Court

Annual average of cases lodged: 1,379

Clearance rate: 102%

Average clearance times: 169 days



# MATTERS FALLING WITHIN THE JURISDICTION OF ADMINISTRATIVE AND TAX COURTS

(ARTICLE 4 OF THE STATUTE OF ADMINISTRATIVE AND TAX COURTS)

- Fundamental rights in the context of administrative and tax legal relations;
- Review of the legality of administrative rules (e.g. administrative regulations or other regulatory rules issued by entities acting under public authority, such as concessionaire regulations);
- Review of the legality and general legal compliance (including constitutionality) of administrative acts or acts in administrative matters;
- Public procurement and public contract litigation;
- Non-contractual civil liability of the State and other public law entities (legal regime of non-contractual civil liability for the acts and omissions of administrative, legislative and judicial bodies);
- Full protection of legal (subjective) administrative rights;
- Judicial protection in the context of *actio popularis* (diffuse rights relating to public health, housing, education, the environment, land use planning, urban planning, quality of life, cultural heritage and state property);
- Public intersubjective relations of an administrative nature;
- Electoral litigation (elections of administrative bodies, including municipalities);
- Administrative offences relating to urban planning and tax law;
- Public employment;
- Tax litigation (invalidity of tax acts, acts performed in the tax enforcement process and administrative acts relating to tax law).



# MATTERS THAT FALL OUTSIDE THE JURISDICTION OF ADMINISTRATIVE COURTS

- Disputes concerning employment contracts governed by labour law, even if the employer is a public or administrative body;
- The review of political and legislative acts;
- Acts relating to criminal investigations;
- Administrative offences, including those imposed by the Competition Authority or sectoral regulatory bodies;
- Acts of the competition authority;
- Matters relating to consumer law, including services of general economic interest;
- Matters relating to judicial error by the courts of the other jurisdiction;
- Administrative acts of the Superior Council of Magistrates (the governing body of the other jurisdiction) and the President of the Supreme Court of Justice:



# ORGANISATION OF THE COURTS

- In the first instance, the administrative and tax courts are operated as a group (Administrative and Tax Court - ATC), apart from Lisbon, where the administrative and tax courts of first instance are separated.
- The law permits specialisation from the outset. This occurs when the volume or complexity of cases warrants it. Specialised courts are created under these categories by law:
  - Common administrative issues;
  - Social administrative issues;
  - Public procurement;
  - Urban planning, environment and spatial planning;
  - Common tax issues;
  - Tax enforcement and administrative offence appeals.
- If the volume or complexity of cases justifies it, the tax and administrative sections of the Central Administrative Courts (CAC) may be organised into specialised subsections. This is currently the case in some of these legal categories:
  - General Administrative Subsection;
  - Social Administrative Subsection;
  - Public Procurement Subsection;
  - General Tax Subsection;
  - Tax Enforcement and Administrative Offences Appeals Subsection.
- The Supreme Administrative Court (SAC) has two Chambers: Administrative Chamber and Tax Chamber and non-specialised sections.



# PROVISION OF JUDGES

## First Instance Judges (ATC's Judges)

- By competitive examination under the legal regime for admission to the judiciary (Law no. 2/2008)
  - Entrance exam (knowledge tests, curricular evaluation, psychological exam)
  - Initial training (1st cycle of theoretical and practical courses at the magistrates' school and 2nd cycle of training in the courts): 1 year + 1 year.
- By transfer

## Central Administrative Court Judges

- By transfer from another chamber of the CAC
- By competitive examination (ATC judges with more than 5 years' service and a grade of not less than "Good with distinction")

## Supreme Administrative Court Judges

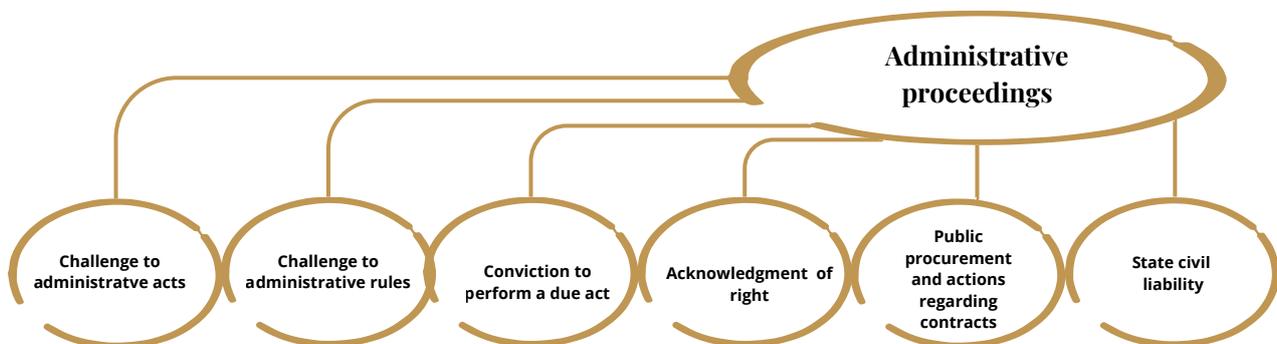
- By transfer from another chamber of the SAC
  - By tender
  - CAC Judges with more than 5 years' service
  - Deputy Attorneys General with more than 5 years' service in the category
  - Jurists of recognised merit with more than 20 years of professional experience in the field of public law (professor, lawyers, public servants)



# JUDICIAL PROCEEDINGS

## — ADMINISTRATIVE PROCEEDINGS

Administrative proceedings are the procedure par excellence, in which the court has full jurisdiction over all legal and administrative legal relationships and in which different claims may be combined.



The proceedings comply with the adversarial principle and the Justice enjoys extensive powers in managing the case. The pleadings stage is followed by procedural clarification, the presentation of evidence, arguments and the trial.

Where, at the stage prior to the decision, the applicant's claim is deemed well-founded but that the satisfaction of his interests is prevented, in whole or in part, by any situation of absolute impossibility or that the enforcement of the duties imposed on the defendant would cause exceptional harm to the public interest, the court shall issue a decision recognising the merits of the applicant's claim, acknowledging the existence of the circumstance that prevents, in whole or in part, the decision requested from being made, and recognising the applicant's right to compensation of this fact.



# JUDICIAL PROCEEDINGS — ADMINISTRATIVE PROCEEDINGS

Portuguese procedural system still has some inquisitorial or accusatorial notes:

- The scope of the judge's powers has increased with each legislative reform and is now quite broad. For example, when an act is challenged, the focus of the legal proceedings is on the act itself rather than the grounds of illegality attributed to it. This enables the judge to annul the act on the basis of an illegality identified in the submitted evidence, even if it differs from that invoked by the claimant, provided that the adversarial principle is respected..

The applicant may request interim measures. These are processed urgently. This can be done either before or alongside administrative action.

These interim measures are not standardised and can include suspending the effectiveness of administrative acts or provisionally regulating a right. For the Court to adopt the requested interim measure, the applicant must prove the following three conditions:

*periculum in mora*

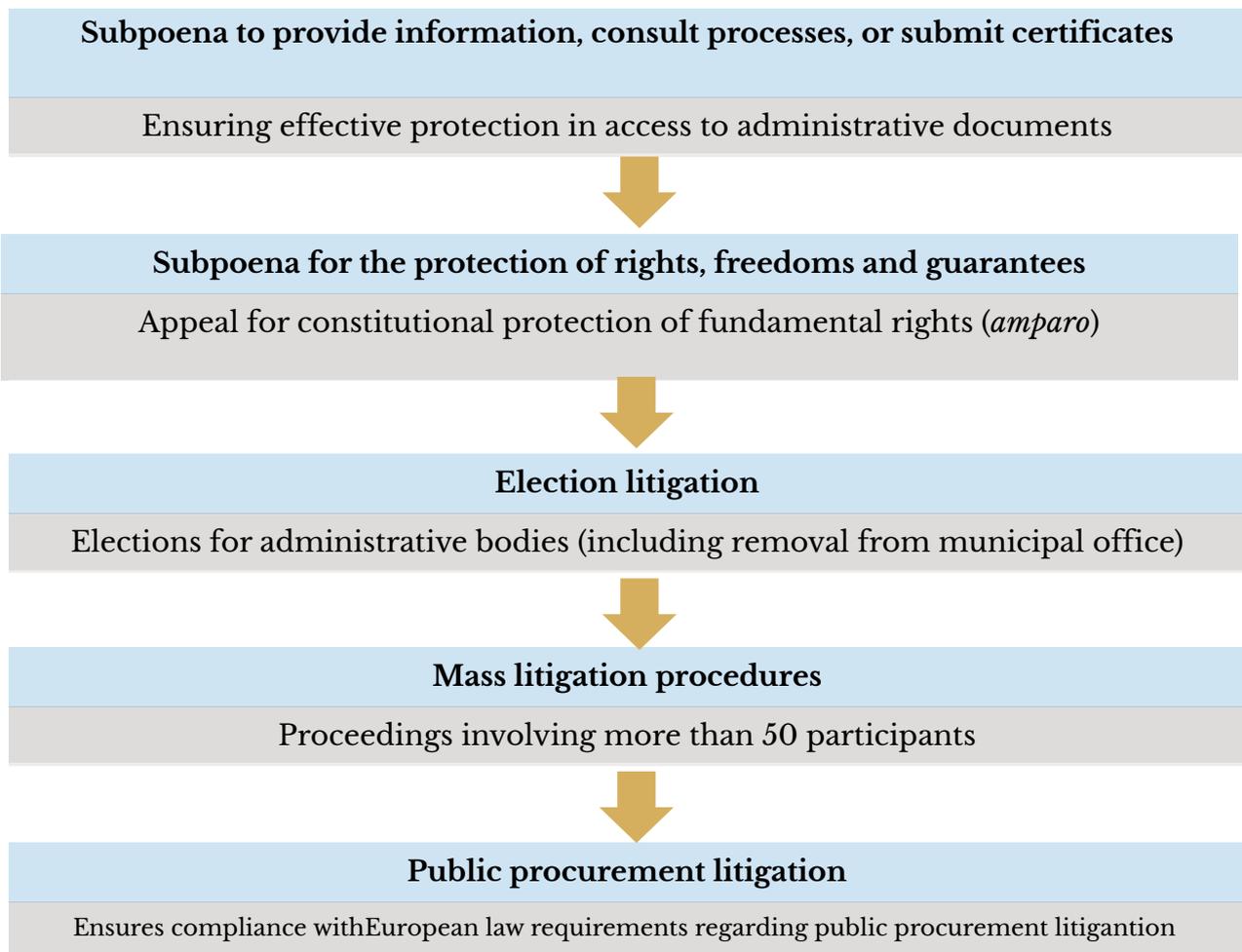
*fomus boni iuris*

*proportionality (effects of the measure / public interest)*



# JUDICIAL PROCEEDINGS — ADMINISTRATIVE PROCEEDINGS

There are also primary emergency procedures, which are also treated as urgent.



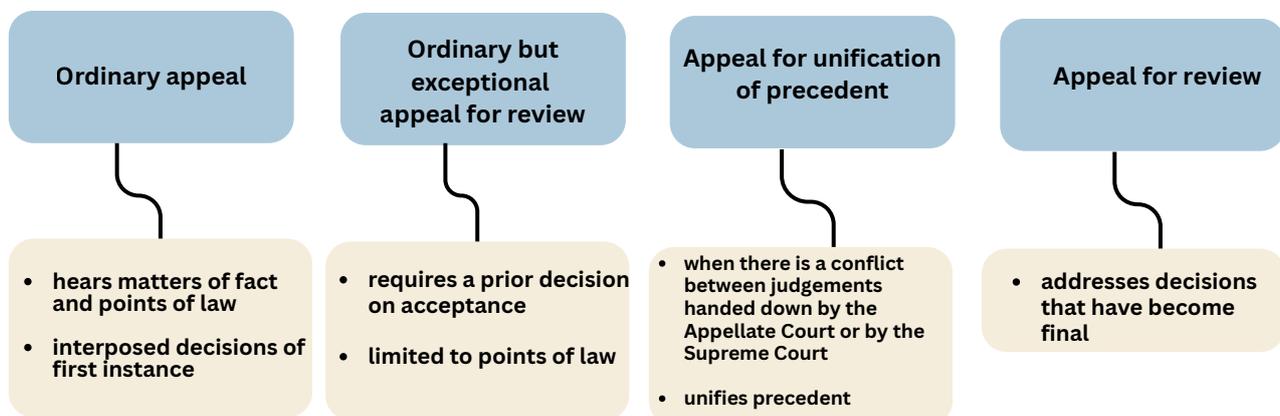


# JUDICIAL PROCEEDINGS

## ADMINISTRATIVE PROCEEDINGS

Administrative judicial appeals encompass all traditional forms of judicial review of decisions:

- When the SAC is hearing the case in first instance, decisions issued by formations of three justices can be appealed against by means of an **ordinary appeal** to the Full Bench of the Chamber;
- An **exceptional appeal** (a kind of 'writ of certiorari' or 'permission to appeal to the final instance') may be made against decisions of the Central Administrative Court, subject to a prior admission decision by the three most senior judges in the Chamber. This is permitted when the case is recognised as being of special legal or social relevance or when it is deemed necessary for the better application of the law. The appeal is always limited to points of law;
- A *per saltum review of decisions at first instance* is permitted when only one point of law is at issue and the value of the case exceeds 500,000 euros or is indeterminate (e.g. annulment of acts or declaration of the illegality of rules).;
- Appeal for unification of precedent (extraordinary);
- Appeal for review of a final judgement (extraordinary).





# JUDICIAL PROCEEDINGS — ADMINISTRATIVE PROCEEDINGS

The ordinary but exceptional appeal for review:

- The admission of this appeal can be motivated by
  - a question which, by reason of its legal or social relevance, is of fundamental importanceor
  - The need to better apply the law to the case
    - in this case the Supreme Court acts as an ordinary court of second appeal and this is the reason why some States abandoned this wording
- A decision to hear the case is akin to a permit to re-examine the whole process in the Administrative Chamber, but is based on (and limited to) a specific question in the Tax Chamber
- The decision to admit or deny the exceptional appeal is taken by the three senior judges of the Chamber
- The arguments to admit the appeal are disclosed along with the petition for the appeal and there are no limits, so, many times, the parties present longer documents



# JUDICIAL PROCEEDINGS

## TAX PROCEEDINGS

Article 9 of the General Tax Law (LGT) guarantees access to tax justice for the protection of all legally protected rights or interests. It is the responsibility of the courts of this tax jurisdiction to administer justice in disputes arising from tax legal relationships.



The judicial appeal proceedings are the tax procedure par excellence, which applies solely to appeals against tax assessments (tax assessment notices) and appeals against administrative acts in tax matters that entail assessing the legality of the tax assessment notice.

This procedure may therefore be based on any illegality, in particular the incorrect classification and quantification of income, profits, assets and other tax-related facts; lack of jurisdiction; failure to state, or defective statement of legally required reasons; breach of other procedural requirements.

This challenge begins with an application initiating proceedings, addressed to the judge of the competent tax court, in which the challenger identifies the contested act and the entity that performed it; sets out the facts and legal grounds on which the application is based; and indicates the value of the case or how they wish it to be determined by the relevant tax authorities.



# JUDICIAL PROCEEDINGS — TAX PROCEEDINGS

Along with the application, the appellant must provide the documents in his possession, draw up a list of witnesses, and request any other evidence.

As a general rule, a challenge only has suspensive effect where adequate bank security is provided. This explains why, in tax proceedings, interim remedies are essentially in behalf of the Treasury.

## Appeals before the Supreme Administrative Courts in tax matters:

- An **ordinary appeal** is against the decisions of the first instance courts when only points of law are challenged, the value of the case exceeds €30,000 and the amount of the loss exceeds €2,500;
- An **ordinary appeal** can also be made against the decisions of first-instance courts if the challenge is based solely on points of law and the decision contradicts three judgements, unless there has been a substantial change in applicable legislation;
- An **ordinary but exceptional appeal** (a kind of 'writ of certiorari' or 'permission to appeal to the final instance'), which is subject to a prior admission decision by the three most senior judges in the Chamber. This is granted when the case is recognised as being of special legal or social relevance, or when it is deemed necessary for the better application of the law. Appeals are always limited to points of law.;
- **Appeal for review** of a final judgement (extraordinary) (including conflicts between arbitration awards).

# ENFORCEMENT OF JUDGEMENTS IN ADMINISTRATIVE AND TAX MATTERS



- Judicial decisions are binding and public and tax administrations are obliged to comply with them, with the prerogative to promote voluntary compliance (choice of enforcement).
- This enforcement can be "monitored" in a separate procedure (enforcement of judgments), where the grounds for an alleged "legitimate reason for non-enforcement" are judicially assessed.
- The court has wide powers to enforce its decisions: to order compliance, to award damages and to apply a penalty payment if needed.
- The rules on the enforcement of judgments also apply in the urban planning field;
- There have been cases where demolition has been ordered, but in many cases subsequent legalisation and changes to the urban plan make it possible to restore urban legality without the need for demolition.

## FORMAT OF JUDGEMENT AT THE SUPREME ADMINISTRATIVE COURT

**Administrative Litigation Chamber**  
(12 Judges + President)

**Tax Litigation Chamber**  
(12 Judges + President)

- Cases are heard in conference, in ordinary sessions on the non-specialised subsections every week or fortnight, in person or mixed, each composed of 3 judges + President or Vice-President, who vote only in the event of a deadlock (each judge defending a different solution).
- There is no rule for public hearings of pleadings, which only take place when the subsections rule at a first instance in judicial proceedings issued against the highest organs of the State (President of the Republic, Assembly of the Republic, Council of Ministers, Prime Minister...).

**Full bench of the Administrative Litigation Chamber**  
(12 Judges + President)

**Full bench of the Tax Litigation Chamber**  
(12 Judges + President)

- They meet once a month, mainly to hear appeals for the unification of jurisprudence or, in the case of administrative litigation, to hear a appeals against the first instance decisions of the subdivisions.

# ENFORCEMENT OF JUDGEMENTS IN ADMINISTRATIVE AND TAX MATTERS



## PRAXIS

- The rapporteur shall send the draft decision in advance to the two deputies, including the Vice-President;
- A weekly table of cases to be judged is drawn up and publicised (public document);
- The conference session, attended by all the judges of the respective Chamber, serves for the presentation of the draft, discussion and vote.

## CASE MANEAGEMENT

The distribution of cases is electronic, daily and carried out in each court

Rapporteurs and substitutes are drawn by lot for each case.

A new distribution takes place if cases are assigned to judges who are prevented from intervening in them.

In the courts of first instance, there is one president per geographical area who is responsible for procedural management.

There are tree types of proceeding: urgent, prederential and normal.

Although each judge must follow the guidance of the Superior Council of Administrative and Tax Courts to judge first those cases that have been pending the longest, they can choose which cases to bring to trial in each session.

- The duration of cases in the jurisdiction varies greatly, as it depends on the type of case (urgent, priority or normal) and the number of appeals it has, its complexity.
- The data in the 2022 report show that the resolution rate in the Supreme Administrative Court and Central Administrative Courts is currently close to 100%, in terms of the ratio between cases lodged and cases decided, but this rate does not allow the backlog to be cleared, which is why the work of the recovery teams is crucial.

# ENFORCEMENT OF JUDGEMENTS IN ADMINISTRATIVE AND TAX MATTERS



- There is no annual information on the number of cases sent per judge and this issue is assessed during inspections of courts below the Supreme Administrative Court.
- The Superior Council of Administrative and Tax Courts is working on approving a computer programme to manage productivity at a judge-and court-level.

## MANAGEMENT OF THE COURTS

Presidents of first  
instance courts by  
geographical area  
(North, Centre and  
South)

- They are appointed by the SCATC for a 3-year term of office on a commission basis and must have previously completed a specific training course
- Performs representation, administration and procedural management functions

President and Vice-  
Presidents of the  
CAC

- They are elected by their peers for a 5-year term without re-election
- The President exercises powers of representation, administration and procedural management
- The Vice-Presidents only exercise the powers delegated to them by the President

President and Vice-  
Presidents of the  
SAC

- They are elected by their peers in a secret ballot for a five-year term without re-election
- The President exercises powers of representation, administration and procedural management
- The Vice-Presidents only exercise the powers delegated to them by the President



# ENFORCEMENT OF JUDGEMENTS IN ADMINISTRATIVE AND TAX MATTERS

## THE IMPLEMENTATION OF TECHNOLOGY IN COURTS

- Processes are now digitised and available on a dedicated platform (Magistratus).
- Dispatch and signatures are digital.
- Authorised lawyers can access the platform and consult the cases and are also notified in this way.
- Judges can consult court cases as well as lower court cases.
- The judgments of the Central Administrative Courts and Supreme Administrative Court are publicly available on the website [www.dgsi.pt](http://www.dgsi.pt), while the judgments of the courts of first instance are not.
- The website [www.dgsi.pt](http://www.dgsi.pt) also has a search tool, although it is not very accurate.
- Decisions are anonymised before being published on the site.
- Software is being developed for anonymisation using AI.
- Software is being developed for assisting judges on the preparation of the judgements.



# ENFORCEMENT OF JUDGEMENTS IN ADMINISTRATIVE AND TAX MATTERS

## ALTERNATIVE DISPUTE RESOLUTION AND ITS IMPACT ON CASE MANAGEMENT

- In Portugal, administrative tax arbitration and tax arbitration exist, the former being entirely voluntary and the latter, in the context of administrative contracts, often imposed by the law approving the basis of the administrative contracts (mostly concession contracts).
- Decisions of the administrative arbitration courts can be requested to be heard by the Supreme Administrative Court (a kind of "writ of certiorari" or "permission to appeal to the final instance").
- There's also an "appeal for securing uniform case law" to the Full Bench of the Administrative Chamber, if there is a conflict between the arbitration decision and a decision of the Supreme Administrative Court or the Central Administrative Courts on the same fundamental point of law.
- Tax arbitration decisions may be appealed against a decision of the Supreme Administrative Court or the Central Administrative Courts, or between arbitration decisions on the same fundamental point of law, to the Full Bench of the Chamber for securing uniform case law.
- In administrative litigation, the impact of these appeals on the volume of work is less than in tax litigation.

# SUPREME COURT ADMINISTRATIVE

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República Portuguesa