

XXI. PORTUGAL

Population: 9,833,408

Religious make-up: 80% Roman Catholic - 2% Protestant - 3% Atheist

Membership OSCE: Original - Helsinki Final Act: Original - Charter of Paris: Original

Membership Council of Europe: 22/09/76 - Membership U.N.: 14/12/55 - Member of the European Union

A. CONSTITUTION

{ **Constitution adopted on: 2 April 1976** }

Article 13 Principle of Equality

(1) All citizens have the same social dignity<Image: Human Dignity> and are equal before the law.

(2) No one is privileged, favored, injured, deprived of any right, or exempt from any duty because of his ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation, or social condition.

Article 19 Suspension of the Exercise of Rights

(2) The declaration of a state of siege or emergency in no case affects the rights to life, personal dignity and identity, civil capacity and citizenship of the person, the non-retroactive nature of criminal law, the right to defense of accused persons, and the freedom of conscience and religion.

Article 35 Use of Data Processing

(3) Data processing may not be used in regard to information concerning a person's philosophical or political convictions, party or trade union affiliations, religious beliefs, or private life, except in the case of non-identifiable data for statistical purposes.

Article 41 Freedom of Conscience, Religion, and Worship

- (1) Freedom of conscience, religion, and worship are inviolable.
- (2) No one may be persecuted, deprived of rights, or exempted from civil obligations or duties because of his convictions or religious practices.
- (3) No one may be questioned by any authority about his or her convictions or religious practices, except for gathering of statistical data that cannot be identified individually, nor shall anyone be prejudiced by his or her refusal to reply.
- (4) The churches and religious communities are separate from the State and free to organize and exercise their own ceremonies and worship.
- (5) The freedom to teach any religion within its own denomination and the use of its own means of public information for the pursuit of its activities, are safeguarded.
- (3) The right to be a conscientious objector is safeguarded in accordance with the law.

Article 43 Freedom to Learn and Teach

- (2) The State may not arrogate to itself the right to plan education and culture in accordance with any philosophical, aesthetic, political, ideological, or religious guidelines.

Article 276 Defence of the Country, Military, and Civic Service

- (4) Conscientious objectors perform civic service of a length and difficulty equivalent to that of armed military service.

B. LEGISLATION

The 1971 Law on Religious Freedom

The 1940 Concordat (as amended) between Portugal and the Holy See

1999, draft on the law on religious freedom:

Law on Religious Freedom

(Draft)

Principles

Article 1

(Freedom of conscience, religion and worship)

Freedom of conscience, religion and worship is inviolable and guaranteed to all in accordance with the Constitution, the Universal Declaration of Human Rights, the applicable international law and this law.

Article 2

(Principle of equality)

1. No one can be favoured, bettered, aggrieved, persecuted, deprived of any right or exempt from any duty owing to their convictions or religious practice.
2. The State shall not discriminate against any church or religious community as compared with others.

Article 3

(Principle of separation)

Churches and other religious communities are separated from the State and are free to organise themselves and in the exercise of their activities and worship.

Article 4

(Principle of the non-denominational State)

The State does not adopt any religion, nor even it pronounces on religious questions.

2. The State cannot plan education and culture according to any religious directives.

3. State education shall not be denominational.

Article 5

(Legal force)

1. Freedom of conscience, religion and worship allows only for the necessary restrictions in order to safeguard constitutionally protected rights or interests.

2. Freedom of conscience, religion and worship does not authorise criminal practice;

3. The limitations of the right to conscientious objection demarcate the permitted conduct for objector.

4. The law can regulate, whenever necessary, the exercise of freedom of conscience, religion and worship, without prejudice to the existence of this right.

5. The declaration of a state of siege or a state of emergency cannot in any event affect freedom of conscience and religion.

Article 6

(Principle of tolerance)

The conflicts between the freedom of conscience, religion and worship of one person and that of another or others shall be resolved with tolerance, so as to respect as much as possible the freedom of each one.

II

Individual rights of religious freedom

Article 7

(Meaning of freedom of conscience, religion and worship)

Freedom of conscience, religion and worship includes the right to:

a) Have, not have and to cease to have a religion;

Choose freely one's own religious beliefs, change beliefs and abandon those which one

had;

- c) Inform others and be informed oneself about religion, to study and teach religion;
- d) Profess one's own religious beliefs, procure new believers in one's faith, express and divulge freely, using words, images or any other means, one's thoughts or religious matters;
- e) Produce scientific, literary and artistic works on the subject of religion;
- f) Meet, appear in public and associate with others in agreement with one's own convictions on religious matters, without limitations other than those laid down in Articles 45 and 46 of the Constitution;
- g) Practise or not practise the acts of worship private or public, peculiar to the professed religion;
- h) Act or not act in accordance with the norms of the professed religion.
- i) Choose for one's children names from the list of names of the professed religion.

Article 8

(Negative meaning of religious freedom)

1. No one can:

- a) Be obliged to profess a religious belief, practise or attend acts of worship, receive ministerial offices or propaganda on the subject of religion;
- b) Be coerced into taking part, remaining in or leaving a religious association, church or religious community, without prejudice to the respective rules on affiliation and exclusion of members.
- c) Be asked by any authority about one's convictions or religious practice, except for the collection of statistical data which is not individually identifiable, nor be discriminated against if one refuses to respond.

Be obliged to take a religious oath.

2. The information cannot be used for the processing of data referring to personal

convictions or religious faith, except when dealing with the processing of statistical data which is not individually identifiable.

Article 9

(Right to religious participation)

Freedom of religion and worship includes the right, in accordance with the respective ministers of religion and according to the norms of the church or religious community chosen, to:

- a) Belong to the church or religious community that one chooses, participate in the internal life and religious rites practised in common and receive the ministerial offices that one requests;
- b) Celebrate marriage and be interred according to the rites of one's own religion;
- c) Commemorate publicly the religious festivals of one's own religion.

Article 10

(Religious education of minors)

1. Parents have the right to educate their children in harmony with their own convictions on religious matters, with respect for the moral and physical integrity of the children and without prejudice to their health.

Minors, from the age of 16 years, have the right to make their own choices relating to freedom of conscience, religion and worship.

Article 11

(Conscientious objection)

1. Freedom of conscience includes the right to object to compliance with a law which goes against the imperative dictates of one's own conscience within the limitations of the rights and duties imposed by the Constitution and under the terms of any law which might govern the exercise of the conscientious objection.
2. The dictates of the conscience which are considered to be imperative are those the violation of which involves a serious attack on one's moral integrity.
3. Conscientious objectors to military service, without the exception of those who also invoke a conscientious objection to civil service, have the right to a civil service system which respects, to the extent that this is compatible with the principle of equality, the dictates of their conscience.

Article 12

(Ministerial office in special situations)

Being a member of the armed forces, security forces or police, offering military or civil service, internment in hospitals, asylums, colleges, health, educational or welfare institutes or establishments or similar, detention in prison or other places of detention does not impede the exercise of religious freedom and, particularly, the right to ministerial office and the practice of acts of worship.

Vital restrictions for operational or security reasons can only be imposed by way of prior consultation provided this is possible, with the respective minister of religion.

The State shall create adequate conditions for the exercise of ministerial office in the State institutions referred to in no. 1 conferring on its implementation the right to reward by the State.

Article 13

1. The employees and agents of the State and other public entities, as well as contract worker, have the right to on request, suspend work on the day of weekly rest, on the days of festivals and during the hourly periods that are prescribed for them by the denomination that they profess, under the following conditions:

a) They shall work according to a flexitime scheme;

b) They shall be members of a church or registered religious community which has sent

to the Minister for Justice during the previous year a list of the above mentioned days and hourly period for the current year;

c) There shall be full compensation for the respective work period.

2. Under the conditions laid down in subparagraph b) of the above point, exempt from attendance at lessons on the holy days of the week devoted to rest and worship by the respective religious denominations are state or private education students who profess same, the conditions of normal school use remaining intact.

3. If the date for appraisal testing of students coincides with the day devoted to rest or worship by the respective religious denominations, these tests can be carried out at a second calling, or at a later calling, on a day on which the same objection does not arise.

Article 14

(Ministers of religion)

1. Ministers of religion are those persons considered to be such according to the norms of the respective- church or religious community.
2. The status of minister of religion is certified by the competent bodies of the respective church or religious community, which also accredit the respective ministers for the practice of certain acts.

3. Authentication of the certificates and credentials mentioned in the above point falls to the register of religious corporate bodies.

Article 15

(Rights of ministers of religion)

1. Ministers of religion have the freedom to carry out their ministry.
2. Ministers of religion cannot be asked by magistrates or other authorities about facts and matters of which they have had knowledge by reason of their ministry.
3. The exercise of the ministry is considered a professional activity of the minister of religion when it gives him a means of support, sufficient evidence of which for the purposes of authorisation of residence to foreign ministers of religion being its guarantee by the respective church or religious community.
4. Ministers of religion of churches and other registered religious communities have the right to the services of the general social security system under the terms of the law, their being compulsorily registered by the church or religious community to which they belong, unless their religious activity is of a secondary nature and the exercise of the principal, non-religious activity requires compulsory registration in the social security scheme.
5. For the purposes of the two previous points, the ministers of religion, members of holy institutions and other persons who exercise religious activities professionally and who, as such, are certified by the church or religious community to which they belong, shall be compared with the ministers of religion.

Article 16

(Military service of ministers of religion)

1. The military obligations of students of the training establishments for ministers of religion, members of the holy institutions, as well as ministers of religion of churches and other registered religious communities, are fulfilled in ministerial office in the health services and in the social activities of the Armed Forces, in the event that they do not express any desire to join the actual service itself.
2. Attendance at training courses for ministers of religion of a church or registered religious community is ground for release of the tests for classification and selection for military service, as well as postponement of incorporation.
3. The right to conscientious objection to military service in general terms is intact.

Article 17

(Exemption from jury service)

Ministers of religion, members of holy institutions and other persons who carry out the religious activities of the church or other registered religious communities professionally can ask for exemption from jury service.

Article 18

(Religious marriage ceremony)

1. A religious marriage ceremony conducted by the minister of religion of a church or registered religious community settled in the country is recognised for civil purposes. The minister of religion shall have Portuguese nationality or, if a foreigner, have authorisation of temporary or permanent residence in Portugal.
2. Those who intend to contract a religious marriage ceremony shall declare it, in person or by proxy, with the request for inclusion of the respective published documents in the repository of the competent civil register, indicating the minister of religion accredited for the act. The marriage declaration can also be made by the minister of religion, by way of a request signed by same.

3. Once the marriage has been authorised, the register passes on the marriage certificate, under the terms of Articles 146 and 147 of the Code of the Civil Register, with the necessary adjustments. The certificate is only passed on if the register is certain that the betrothed have knowledge of Articles 1577, 1600, 1671 and 1672 of the Civil Code. The certificate must make mention of this fact, as well as the name and accreditation of the minister of religion. The certificate is returned informally to the minister of religion, who is also informed of subsequently known impediments.

4. The presence of the following people is indispensable for the celebration of the marriage:

- a) The contracting parties, or one of these and the proxy of the other;
- b) The minister of religion;

c) Two witnesses

5. Immediately after the marriage ceremony, the minister of religion makes a record in duplicate in the church register or that of the religious community and sends the duplicate record to the competent repository, within the time limit of three days, in order that it can be transcribed into the marriage records register.
6. The register shall carry out the transcription of the duplicate within the time limit of two days and inform the minister of religion of same up to the end of the day following that on which it was done.

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III

Collective right to religious freedom

Article 19

(Churches and religious communities)

Churches and other religious communities are organised and enduring social communities in which believers can achieve all the religious objectives offered to them by the respective denomination.

Article 20

(Religious objectives)

1. Irrespective of whether they are offered as religious objectives by the denomination,

for the purposes of determination under the legal system, the following shall be

considered:

a) Religious objectives are those of the exercise of worship or rites, care of souls, training

of ministers of religion, missionary work and dissemination of the professed

denomination and religious education;

b) Amongst the objectives that are other than religious are those of relief and acts of

charity, education and culture, as well as those for commercial or lucrative gain.

2. Activities with non-religious objectives of the churches and religious communities are

governed by the legal system and, in particular, the tax system for this type of activity.

Article 21

(Freedom to organise churches and religious communities)

1. Churches and other religious communities are free to organise themselves, being able

to arrange with complete autonomy:

a) The formation, composition, competence and operation of their organs;

b) The appointment, activities and powers of their representatives, ministers,

missionaries and religious agents;

c) The religious rights and duties of believers, without prejudice to the religious freedom

of same.

d) The adherence or participation in the establishment of inter-denominational

federations or associations, with their head-office in the country or abroad.

2. Clauses to safeguard religious identity and the special character of the professed

denomination are allowed .

3. Registered churches and other registered religious communities can autonomously

establish or recognise either churches or religious communities of local or regional scope,

consecrated life institutes and other institutes with the character of associations or

foundations, for the exercise or support of their religious activities.

Article 22

(Freedom to carry out religious activities and to worship)

Churches and other religious communities are free to carry out their religious activities

and to worship, being able, namely, without interference from the State or third parties,

to:

a) Carry out acts of worship, private or public, without prejudice to police and traffic

requirements

a) Establish places of worship or meeting for religious purposes;

b) Teach according to the format and through the persons authorised by it the doctrine of the professed denomination,

c) Disseminate the professed denomination and procure new believers for it;

d) Minister to the needs of its own members;

e) Communicate and publish documents or matters of religion and worship;

f) Make contact with and communicate with the organisations of the same or other denominations in the national territories or abroad;

g) Appoint and train their ministers;

h) Establish seminaries or any other training or religious education establishment.

Article 23

(Religious education in public schools)

1. Churches and other religious communities or, in their turn, representative organisations of believers residing on national territory, once registered, by themselves, or jointly, when they decide to set up a single denomination for the purpose or agree on a common program, can ask the Minister for Education that they be allowed to provide religious education in the official schools of 2nd and 3rd levels of primary and secondary teaching as indicated by them.
2. The holding of classes on the religious education of a certain denomination or program depends on whether there is in each official school the minimum number of pupils who, being older than 16 years, have expressly and positively shown the desire to attend religious instruction in the registration document by the person in charge of education or by themselves.
3. Teachers shall be appointed or contracted, transferred and excluded from the teaching of religious instruction by the State, in agreement with the church representatives, communities or representative organisations. Teaching will never be ministered by a person who is not considered capable by the said representatives.
4. It falls to the churches and other religious communities to train teachers, draw up programmes and approve the didactic material, in harmony with the general guidelines of the educational system.

Article 24

(Times of religious broadcasts)

As part of public television and radio services, the churches and other registered religious communities are guaranteed, individually through the respective representative organisation, or jointly when they decide to take part as a single denomination, a time for broadcasting, set globally for all, in order to pursue their religious objectives.

The attribution and distribution of the broadcasting time mentioned in the previous point takes account of the representativeness of the respective denominations and the principle of tolerance, by way of agreements between the Religious Denomination Broadcast Time Committee and the incumbent companies of the public television and radio services.

3. The Religious Denomination Broadcast Time Committee is composed of representatives of the Catholic Church and churches and religious communities settled in the country or federations in which those are integrated, appointed for three years by joint ruling of the Ministry of Justice and the Ministry responsible for these public services after a hearing of the Committee of Religious Freedom.

Article 25

(Religious slaughter)

The religious slaughter of animals shall comply with the applicable legal provisions concerning protection of animals.

Article 26

(Non-religious activities of churches and other religious communities)

Churches and other religious communities can also carry out non-religious activities which are instrumental, consequential or complementary to their religious activities, namely:

a) To create special schools and co-operatives; b) To do charitable work for believers, any persons or animals; c) To promote their own cultural expressions or education and culture in general; d) To use the appropriate means of social communication in the pursuit of their activities.

Article 27

(Right to be heard regarding town planning)

Churches and other registered religious communities have the right to be heard with respect to decisions relating to the effect on space for religious purposes in the town planning of those areas in which they have an organised social presence.

Article 28

(Use for religious purposes of property intended for other purposes)

If there is agreement with the owner, or the majority of joint owners, use for religious purposes of property or a parcel of land intended for other purposes cannot be the basis of an objection, nor of the application of penalties, by the administrative or autonomous authorities, in that a suitable alternative to implementation of these objectives does not exist. The right of expropriation for public use remains intact.

Article 29

(Demolition or use to another purpose of religious goods)

1. Places of worship, buildings, annexes or worship objects cannot be demolished or used for another purpose except with the prior agreement of the church or the religious community, or by expropriation for public use or by requisition, in case of urgent public need.
2. In cases of expropriation for public use or requisition or classification as of cultural value the church or the religious community shall always be heard.
3. In any case, it is not allowed to acquire or make a non-religious use except if these goods have been deprived of their religious nature by the respective church or religious community.

Article 30

(Tax-free contributions)

1. Churches and other religious communities can freely, without being subject to any tax:

a) Receive contributions from believers for the exercise of worship and rites, as well as donations for the implementation of their religious purposes, of a regular or casual nature; Make public collections, specifically within or with access to places of worship, as well as in the buildings or places that belong to them;

Distribute free of charge publications with statements, notices or instructions on religious matters and display them in places of worship.

2. Not included in the exemption of the previous point is the cost of training, therapy or spiritual counseling offered entrepreneurially.

Article 31

(Tax benefits)

1. Registered religious corporate bodies are exempt from:

A) Any tax or general, regional or local contribution, on

a) Places of worship or other property or parts of same directly intended for implementation of religious objectives;

b) Installations of direct and exclusive support for activities with religious purposes;

c) Seminaries or any establishments actually intended for the training of ministers of religion or religious education;

d) Outbuildings or annexes of the property described in subparagraphs a) to d) for use by special social welfare institutions;

e) Gardens and parks of the property described in subparagraphs a) to e) provided they are not intended for profit purposes.

B) Property transfer tax and inheritance tax and tax on bequests with respect to:

a) Acquisitions of goods for religious purposes;

b) Deeds of incorporation of foundations, once registered as religious corporate bodies:

2. Individuals can, for the purposes of tax on the income of individuals, decrease the net income end, up to the amount determined by the respective Code, the value of the donations, in cash or in kind, that they have granted to the registered religious corporate bodies.

3. An amount equivalent to 0.5% of the tax on the income of individuals, settled on the basis of annual statements, can be intended by the taxpayer for religious objectives o.acts of charity, a church or religious community settled in the country, which they shall indicate in the income tax return, provided that the church or religious community has

requested the tax benefit.

4. Items intended, under the terms of the previous point, for church and religious communities are delivered to same or their representative organisations which shall

present the Inland Revenue with an annual report on the destination of the received amounts.

C. CONSCIENTIOUS OBJECTION