

RESOLUTION 41/9 ON THE NEGATIVE IMPACT OF CORRUPTION ON THE ENJOYMENT OF HUMAN RIGHTS – CHALLENGES FACED AND BEST PRACTISES APPLIED - PORTUGAL

It is commonly recognized that corruption jeopardize the foundations of the rule of law and undermines citizens' trust in democratic institutions and public bodies as it negatively affects principles as of legality and transparency, accountability and integrity. Good governance and fair and transparent competition are also affected by the negative influence of acts of corruption.

Corruption creates a threat to security, economic development and to the welfare of populations, and may lead to other types of criminality and human rights violations.

The damaging effects of corruption on economic and social development have been recognized by the international community. In the United Nations 2030 Agenda for Sustainable Development one of the goals (SDG 16.5) is to reduce corruption and bribery substantially in all their forms.

Corruption goes beyond States borders and none of them is immune to the negative effects of this crime, so strong efforts are needed to strengthen good governance and build transparent, effective and accountable institutions and protect the enjoyment of human rights.

There is a complete and comprehensive anti-corruption legal framework and policies in Portugal, but challenges remain, especially in what regards the spreading of the message for a need of a culture of lawfulness, ethics and accountability among the younger generations, in schools and universities and/or include the education for citizenship in the curricula.

Portugal has been adopting some practices and policies to prevent and repress these behaviours at various levels and, through this approach, assure that no human rights are affected. In recent years, efforts have been made to adopt policies and procedures, including through legislative measures, in order to grant that the full enjoyment of human rights, as a fundamental right provided for in the Constitution of the Portuguese Republic, cannot be undermined by acts of corruption and other related crimes.

Therefore, Portugal has progressively adopted - and is still adopting - simplified administrative procedures, allowing for the facilitation of citizens access to the competent decision-making procedures of public authorities, for enhancing transparency and, at the same time, for preventing corruption. SIMPLEX Programme in the public central, regional and local administration, is the most emblematic of these procedures.

Portugal is focused on the use of information technologies (IT) and e-Government (e-Gov) in the framework of electronic Public Administration policies, of simplification and of transparency of

the public sector which, in a broader perspective, allowing for the provision of better services to citizens, granting its rights, and particularly for preventing corruption.

Some examples are, among others, the dematerialization of the Prescription of Medicines and Users Electronic Identification of the National Health System and Health Professionals (DRM-IEUP), the E-invoice system, the CITIUS platform (enabling electronic submission of documents for use in court cases) or the said SIMPLEX Programme, which combines the electronic administration and simplification policies.

Although of a different nature and with different objectives, the possibility of reporting alleged corruption crimes by using information technologies should be highlighted. It is available on the website of the Prosecutor General's Office the possibility of electronic reporting of corruption cases. The complaint can remain anonymous. In addition, the complaint will receive a number by which it will be identified and a password shall be assigned to the complainant that later will allow him/her to access the communication and take notice and track the status of the investigation and other data that may be of his/her interest.

In the field of education, since 2012, together with the Council for the Prevention of Corruption (CCP), the Ministry of Education (MoE) is developing an educational project in the framework of citizenship and of ethics in public life, involving young generations. The project "IMAGES AGAINST CORRUPTION" consists in a contest in Portuguese basic and secondary schools to stimulate students, teachers and all scholar community including family, in a reflection process on the topic of ethics and prevention of corruption in society. The project consists in the production, in classroom, of a reflection about the prevention of corruption and then the production of an artistic piece, as the National Plastic Arts contest.

Bearing in mind that educational processes are key factors for the development and deepening of citizenship in any society, for a human rights culture, and that through them social cohesion is established and that these processes are particularly important, the CCP and the MoE developed strategies contributing to improve the prevention of corruption in society. With the aim of facilitating reflection and stimulating the approach to the issue of corruption prevention by schools and by the educational community, the CCP published online a set of manuals called "AGAINST CORRUPTION, BE A CITIZEN", a Glossary and three manuals, attending to different levels of education, and a notebook to support teachers on these educational activities.

Other good practices are the prohibition of anonymous donations, gifts or loans of a monetary nature or in kind from national or foreign legal persons to political parties, in order to improve transparency. Another one is the creation of Portal BASE, through which public procurements are exclusively done by using an electronic platform, allowing for increasing transparency and preventing corruption.

Regarding good practices for safeguarding human rights while combating corruption at the legal-constitutional level, the Constitution of the Portuguese Republic foresees in Article 16 that all constitutional and legal provisions regarding fundamental rights should be interpreted and integrated accordingly with the Universal Declaration of Human Rights.

The Portuguese judiciary system is hence oriented to the respect for fundamental rights and the equality of all before the law, contributing to give full effectiveness to the requirements of the right to a fair trial that international instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights or the European Convention on Human Rights, have long consecrated. The referred safeguards to this regard are materialized in the Portuguese Criminal Code and in the Code of Criminal Procedure.

The Inspectorate-General of Health Activities (IGAS) is a government office, under the dependency of the Ministry of Health. Its mission is to carry out inspection, audits and disciplinary actions, aimed at preventing and detecting corruption and fraud in the health sector. Its vision can be stated as “Promoting Quality. Preventing Fraud”.

IGAS is an active partner of the European Healthcare Fraud & Corruption Network (EHFCN), a non-profit organisation of healthcare and counter-fraud, counter-corruption and/or counter-waste organisations in Europe.

Two of the key points of IGAS strategic analysis are “To fight fraud and corruption jointly with front-line offices, such as Public Prosecutor, Criminal Police and Supreme Audit Court” and “Applying intelligence as a mean to transform scattered and non-connected data into structured and global information”.

In order to accomplish those key strategic points, IGAS created the Antifraud Unit, along with innovative methodology based on intelligence-led approach to inspections and audits, resorting to criminal techniques adapted to non-criminal research and planning.

The Project is in development stage and, in June 14th, IGAS was distinguished with the 2019 EHFCN New Ways & Innovation Award, for the “Antifraud’s Unit: a Project of intelligence-led inspecting and auditing, focused on prevention and combating fraud.

In March 2019, the project was also recognized, in the framework of the Public Management Innovation Incentive System, under the supervision of the Administration Modernization and Finance Ministers.

At national level, the Council for the Prevention of Corruption (CPC), established by the Law No. 54/2008 of September 4, is an independent administrative body, operating with the Court of Auditors, develops its national activity in the field of corruption prevention and related

infringements and verifies the existence of good practices for preventing and combating corruption in the Public Administration.

Within the scope of its duties and competences the CPC deliberated, by Recommendation No. 1/2009, of July 1, that all entities engaged in the management and administration of public funds, securities and assets should draw up plans for the prevention of risks of corruption and related violations, which is already a reality in public administration.

At work, for a fairer, more inclusive and sustainable labor market, all public or private entities should:

- Promote the training of its employees, particularly as regards the identification and reporting of corruption situations;
- Develop management practices and systems that encourage and promote relationships of trust;
- Clearly and objectively define which situations constitute conflicts of interest;
- Ensure that all income and expenses are properly documented;
- Provide the public authorities with the necessary collaboration, namely through the timely provision of information that is required under the law;
- Report to the competent authorities any practice suspected of constituting an act of corruption;
- Avoid abuse of their influence for public procurement benefits;
- Acting with zeal and transparency, guided by the observance of good management values and honesty in the performance of their duties.

The organic law of the Ministry of Labor, Solidarity and Social Security (MTSSS) has a General Inspection Service (IG) which, with a strong predominance of the audit function, operates in the universe of MTSSS services and bodies or subject to the supervision of the respective Minister. Following the various audits it carries out with the MLSSS services, IG recommends changes and improvements in terms of independence and technical impartiality and makes the necessary communications and participations according to the severity / type of irregularities detected (for example: the Public Prosecution Service which presents evidence of facts of criminal relevance; to the Court of Auditors the situations that may generate financial responsibility on the part of the Public Administration).

IG also integrates the Internal Control System of the State Financial Administration.

In the development of the national social security system, a set of services and benefits of universal access to all citizens, an attempt has been made to bring citizen administration in a non-bureaucratic manner, notably through an electronic information management system, namely:

- The social security registration and admission of workers are communicated by the employer to the competent social security institution, electronically on the social security website, except

for domestic workers, where it can be done by any written means. In the case of self-employed workers there is exchange of information and articulation between the tax administration and the social security administration.

- Making available on the social security website, to each beneficiary detailed information about their contributive career including the remunerations recorded by the input of contributions, thus avoiding any manipulation of the contributory career.
- The availability of the benefit situation mapping website (benefits paid) and the possibility for the beneficiary to consult (through simulation) the amount of pensions to be received. In the event of debt or any non-compliance, beneficiaries may file a complaint with the social security services.
- Access to administrative justice is guaranteed to beneficiaries in order to obtain contentious oversight of acts of entities of the social security system, as well as to protect their rights or interests legally protected, under the terms provided for in the regulatory law of administrative litigation.
- Existence of sanctioning mechanisms that include the application of fines and the compulsory collection of contributions in the event of non-compliance with obligations with the Social Security.

The Social Security Institute, in its internal management, has adopted some good practices in this area whose relevance deserves to be highlighted:

- Existence of an anti-fraud strategy in which phenomena such as corruption, misappropriation or falsification of data, among others, are naturally considered;
- It works on a progressive approach to implementing a Risk Management System in a process that encompasses the identification of risk events, their analysis and assessment (in terms of impact and probability);
- Prepares preventive plans with control measures to be implemented, in view of the identified risks such as: (i) Prevention Plan to Combat Fraud and Contributory and Provisional Evasion; (ii) Corruption and Prevention Risks Prevention Plan;
- Existence of services with specific intervention skills in this area, with a strong focus on prevention and control, namely: (i) Supervision Department (external intervention / control); (ii) Audit, Quality and Risk Management Office (intervention / internal control);
- Definition of internal channels for illicit participation and associated procedures;
- Definition of interlocutors of close articulation and rapid intervention with entities such as the Judiciary Police and the Public Prosecution Service.

The Working Conditions Authority (ACT) has developed a Corruption Risk Management Plan and Related Infringements that results from the involvement of the managers and workers of the various organizational units of that Authority whose purpose is to identify the main areas of risk of corruption, the situations conflict of interests and incompatibilities and adopt a set of mechanisms and measures to ensure their prevention and management, and their publicity on the website of the Working Conditions Authority, in accordance with Recommendation No. 1 / 2010 of April 7 of the Corruption Prevention Board.

Crimes committed in the exercise of public functions, corruption (passive and active) and improper receipts of advantage are typified in Articles 372 to 374-B, Chapter IV of the Penal Code.

In addition, the following related crimes are also foreseen: embezzlement (art. 375), use embezzlement (art. 376), economic participation in business (art. 377), concussion (art. 379), abuse of power (art. 382), influence peddling (art. 335), harmful administration in the public or cooperative sector (art. 235), breach of secrecy by an official (art. 383), denial of justice and prevarication (art. 369) and damage and substrate of document or technical notation (art. 259), include all public employees in general, including labor inspectors and other ACT employees.

The precepts relating to professional secrecy and incompatibilities of the staff regarding inspection work are, however, those that are directly related to the ACT, namely the provisions contained in articles 21 and 22 of Decree-Law No. 102/2000 of 2th June approving the Statute of the Working Conditions Authority.

In order to properly implement the ACT Corruption Risk Management and Related Infringements Plan there are two instruments:

- Risk Management Standard (2003) of the Federation of European Risk Management Associations (FERMA);
- Committee of Sponsoring Organizations of the Tread way Commission (COSO) document 'Enterprise Risk Management - Integrated Framework' (2004).

It is also important to highlight the relevant national role of the Economics and Fraud Management Observatory (hereinafter, OBEGEF) which was created with the main objective of developing projects that help public and private organizations to know the risks of corruption and fraud to which they are exposed, and to design and adopt preventive instruments that are more appropriate to their reality.

On the other hand, in terms of labor relations and working conditions, it should be noted that most companies are part of a global supply chain that through their operations, directly or indirectly, is exposed to human rights violations at the national level working conditions, and it is necessary for companies to ensure that their practices and services do not contribute to these violations, and to be held responsible for the impacts of their activities at that level.

These issues result from various international guidelines at the UN, OECD or ILO level with clear expectations that companies, regardless of size, sector of activity, organization or location, should respect human rights.

In this regard, it is worth noting in particular the Tripartite Declaration of Principles on Multinational Enterprises and Social Policy, which includes a set of principles on decent work, addressing social security, employment promotion, prohibition of forced labor, elimination of

child labor, equality and non-discrimination at work, working conditions, occupational safety and health, freedom of association and the right to collective bargaining, and access to redress and compensation mechanisms for victims.

These principles constitute recommendations for governments, representative employers 'and workers' associations and multinational enterprises themselves for promoting employment and decent work, as well as improving living and working conditions.

The National Focal Point for the Declaration is ensured by the Ministry of Labor, Solidarity and Social Security, and is responsible for promoting the principles of the Declaration and the dissemination of these guidelines.

In line with a commitment to ensuring ethics and good corporate governance, the recent implementation in Portugal of the Anti-Corruption Campaign of the Portuguese Association of Business Ethics (hereinafter APEE) and the Global Compact Network Portugal (GCNP), in which the public and voluntary commitment of companies is assumed to promote the diffusion of the values of integrity, probity, transparency and responsibility. This campaign is part of the United Nations Global Compact (UNGC) which is an initiative in the field of corporate citizenship and is based on ten fundamental principles, in the areas of human rights, labor practices, environmental protection and anti-corruption, aiming to promote commitment Public and voluntary companies to comply with them.

In fact, combating corruption, one of the priority objectives of Agenda 2030, through SDG 16 - Peace, Justice and Effective Institutions, can itself lead to fairer working practices and greater appreciation and protection of human rights, notably in combating child labor and forced labor, as well as promoting more and better occupational safety and health, especially in the producing countries, in turn contributing to the achievement of SDG 8 - decent work and economic growth.

It should be noted, therefore, that the principles on labor practices underlying the UNGC are based on the International Labor Organization (ILO) Declaration of Fundamental Principles and Rights at Work, namely:

Principle 3: Businesses should support freedom of association and effective recognition of collective bargaining;

Principle 4: The abolition of all forms of forced and compulsory labor;

Principle 5: Effective abolition of child labor;

Principle 6: Elimination of employment discrimination.

To conclude, the challenges facing by States are always constant. However, in the light of what has been stated above, it is clear that Portugal has committed itself to defending and promoting human rights in their different dimensions, together with a set of policies, strategies and

measures adopted to prevent that the enjoyment of such rights may be affected by criminal practices, in particular by different types of corruption.