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Portugal Family Law

Contributor

Morais Leitão, Galvão
Teles, Soares da Silva
& Associados



Magda Fernandes

Partner | mmfernandes@mlgts.pt

Francisca Robalo Cordeiro

Principal Associate | frcordeiro@mlgts.pt

Madalena Diniz de Ayala

Associate | mayala@mlgts.pt

This country-specific Q&A provides an overview of family laws and regulations applicable in Portugal.

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Portugal: Family Law

1. What are the jurisdictional requirements for divorce and property division?

According to article 1773 of the Portuguese Civil Code, divorce can take two forms: by mutual consent or without the consent of one of the spouses. Divorce by mutual consent can be requested by both spouses, by mutual agreement, at the civil registry office, or in court if, in this case, the couple has not reached an agreement on any of the following matters:

- Specified list of common assets, indicating their respective values, or cannot reach an agreement on the sharing of the same;
- Agreement on the exercise of parental responsibilities when there are minor children and there has not previously been judicial regulation, which must be consented to by a Public Prosecutor;
- Agreement on the provision of maintenance to the spouse who needs it;
- Agreement on the destination of the family home;
- Agreement on the destination of pet animals, if any.

In the case of divorce without the consent of the other spouse, the person who files the claim will have to, in accordance with article 1781 of the Portuguese Civil Code, indicate one of the following grounds:

- De facto* separation for one consecutive year;
- Alteration of the other spouse's mental faculties, when it lasts for more than a year and, due to its severity, compromises the possibility of common life;
- Absence, without any news of the absentee, for a period of no less than one year;
- Any other facts that, regardless of the fault of the spouses, show the definitive breakdown of the marriage.

Regarding property division, under article 272-A of the Portuguese Civil Registration Code, spouses may divide their common assets within the scope of the divorce process by mutual consent.

The following are assumptions for the sharing of marital assets regarding real estate, movable assets or social shares subject to registration:

- The absence of doubts regarding the identity and ownership of the assets to be shared;

- Its definitive registration in favour of the spouses.

The agreement is approved by the decision decreeing the divorce, having the same effects provided for by law for other forms of sharing.

In the case of divorce without the consent of one of the spouses, the division of assets is carried out considering the marital property regime and the needs of each spouse, as part of an incident that will be attached to the main divorce proceedings, since an inventory of assets was carried out.

2. In what circumstances (if at all) would your jurisdiction stay divorce proceedings in favour of proceedings in another country?

The presentation of two divorce actions in two different jurisdictions does not in itself determine the suspension of any action that may have been initiated in Portugal. A termination of the instance could occur – not a suspension – if the Portuguese legal system were to be considered incompetent in relation to the competence of another legal system.

Without prejudice, the same may occur within the scope of the regulation of the exercise of parental responsibilities action that are being discussed, if in parallel you are carrying out a process under the Hague Convention for the return of the child to another country or a proceeding for the promotion and protection of a child at risk is pending, in which some danger for the child is being discussed.

3. Is applicable law relevant in your jurisdiction – when would this apply?

Applicable law is relevant in our legal system in case of conflict of laws. For this reason, in matrimonial matters, specifically divorce and legal separation, EU Regulation No. 1259/2010 establishes the applicable national law, which applies, among other countries, to Portugal. In fact, on 12 July 2010, the Council adopted the Decision 2010/405/EU, which authorizes enhanced cooperation in the field of applicable law in matters of divorce and judicial separation.

In terms of parental responsibilities, the applicable law is

equally relevant in the Portuguese legal system, applying article 7 of Council Regulation (EU) 2019/1111 June 25, 2019 on jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility and international child abduction which determines that "*The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized*".

Its recital 92 refers that the law applicable in matters of parental responsibility should be determined in accordance with the provisions of Chapter III of the 1996 Hague Convention.

4. What are the grounds for divorce and are they fault-based?

In 1977, the Portuguese Civil Code was reformed, to allow divorce for both Catholic and civil marriages, establishing two types of divorce: divorce by mutual consent and litigious divorce.

In the latter, the judge made a declaration of fault on the spouse who allegedly violated their matrimonial duties, which had a negative impact on subsequent assets division of and eventual compensations for the spouse found guilty.

This regime was in force until 2008, the year in which Law No. 61/2008, of October 31, was published, which substantially modified the model of litigious divorce, which became known as divorce without the consent of one of the spouses, allowing either of the spouses requesting divorce and abolishing the declaration of guilt.

Currently, two types of divorce are provided for: consensual divorce and contested divorce or divorce without the consent of one of the spouses.

As mentioned above, under article 1781 of the Portuguese Civil Code, the grounds for divorce without the consent of one of the spouses are as follows:

- a. Actual separation for one consecutive year;
- b. Alteration of the other spouse's mental faculties, when it lasts more than a year and, due to its severity, compromises the possibility of living together;
- c. Absence, without any news of the absentee, for a period of no less than one year;
- d. Any other facts that, regardless of the fault of the spouses, show the definitive breakdown of the marriage.

5. What are the requirements for serving the application for divorce on the Respondent?

As already mentioned above, there are three types of divorce:

- a. consensual divorce, which can be requested at a civil registry office if both spouses agree on the end of the marriage and on the essential issues that need to be resolved at the time of divorce;
- b. divorce by mutual consent in court, which can be requested if the two people agree on the end of the marriage, but possibly not on the conditions of the divorce; and
- c. divorce without the consent of one of the spouses, which can be requested in court when only one person wants to end the marriage.

It will be in the latter case that the Respondent is notified.

To this end, it will essentially be necessary for the Applicant to (i) identify both parties, with complete information about both (e.g. full name, tax identification number, address, identification document number), which (ii) prove the marriage through a marriage certificate; (iii) that indicates the basis for the divorce; (iv) that indicates minor children, if any; (v) assets to be shared, if any.

6. When is a foreign marriage, and when is a foreign divorce, recognised?

Any Portuguese citizen who has married a Portuguese or foreign person in another country should request the registration of the marriage by the Portuguese authorities, or in other words, must have the marriage certificate transcribed for the Portuguese Civil Registry, since the civil status of any citizen in Portugal must always be duly updated. This can be done any time after the marriage has taken place. This matter is regulated in Decree of Law no. 131/95, of June 6th (Portuguese Civil Registration Code).

Regarding the divorce, it is important to distinguish between whether the divorce took place within the EU or outside the EU:

- a. If the Portuguese citizen divorced within the EU, he/she must require the registration of the divorce decision at the Civil Registry Office. In this case, it is not necessary to take legal action.
- b. If the Portuguese citizen has divorced in a non-EU country, he/she will have to have the divorce recognized by means of a legal action. Recognition or

homologation of a foreign divorce is carried out within the framework of a specific legal action brought for this purpose, after which it will be entered on the birth certificate of the person in question.

7. Are same sex marriages permitted in your jurisdiction and/or is there another scheme? Do you recognise same sex marriages that have taken place in another jurisdiction?

In Portugal, with the adoption of Law no. 9/2010, of May 31, civil marriage between same-sex couples is now permitted, and the above-mentioned rules apply to the registration of marriages made abroad.

8. What are the substantive financial orders (e.g. capital, property and maintenance) the court can make and how are claims determined?

In Portugal, as referred to above, divorce may be obtained either by court in a proceeding filed by one spouse against the other, or through a divorce by mutual consent, where both parties must have agreed on the termination of their marriage, in which case said request may be filed in a civil registry office ("*Conservatória de Registo Civil*").

If a divorce by mutual consent is agreed upon, the spouses must decide between themselves regarding spousal maintenance and the division of marital assets. This last case happens strictly if the parties were married under the matrimonial regime of community of acquired assets or general community of assets.

If no mutual consent for the divorce is obtained, a request for the financial division of assets may only be done by one of the spouses against the other after the divorce has been decreed by the court. In fact, the assets may not be divided between the parties prior to divorce being established because the date of divorce has to be determined in order for the assets that are considered common be ascertained.

Apart from the division of assets, which may only be obtained after the divorce has been decreed, during divorce proceedings in court, a spouse may obtain preliminary and provisional maintenance – the so-called alimony – in case it shows that:

- a. It does not have financial capacity to live for itself in a normal condition after divorce, namely because it is unemployed or going through financial distress;
- b. That the other member of couple has enough

financial capacity to pay a monthly maintenance, at least until such time as a definitive decision by the court is upheld.

9. What orders can be made in relation to pensions and what are the guiding principles?

Since Article 2004(2) of the Portuguese Civil Code stipulates that maintenance must be set based on the possibility of the person entitled to maintenance being able to provide for his or her own subsistence, it means that the spouse or ex-spouse who is entitled to maintenance is obliged to try to provide for him or herself by looking for sources of income.

The maintenance obligation between divorced couples is therefore limited in time.

As a principle, Portuguese law establishes that each spouse must provide for his own support after the divorce, obtaining its own financial funds and means to survive.

Therefore, the payment of maintenance between spouses is very residual and exceptional and strictly related to an actual and well proven impossibility of the requiring spouse of obtaining income from one of the couple's members, namely for reasons of health or age.

If child maintenance is also in discussion, it will prevail upon maintenance between spouses, for obvious reasons of public order and protection of minors.

10. Can the court make interim provision (including for legal costs) during the proceedings?

Yes, it is possible for the spouse to demonstrate that, during the pendency of the divorce, he or she is unable to meet his or her basic needs and requires provisional maintenance to make ends meet.

The same applies to the allocation of the family home.

In fact, the spouse who is most in need of the family home, due to their financial incapacity, the needs of the children, and factors recognised by the court in each specific case, may provisionally request the allocation of the family home, even if free of charge, pending divorce proceedings.

As far as legal aid is concerned, a spouse who cannot afford a lawyer and/or pay legal costs can apply for legal aid from the state. If they can prove their incapacity, they

can be assigned an appointed lawyer, and they can also be exempt from paying court fees.

11. Can financial claims be made after a foreign divorce?

The request for maintenance or the allocation of the family home is made as an attachment to the divorce proceedings, so it is difficult for such requests to be made if the divorce is taking place or took place in a foreign country.

However, if the divorce has already been decreed by a foreign or national court, there seems to be nothing to stop the spouse who has become financially incapacitated from asking the ex-spouse for maintenance or for the allocation of the family home, provided that the Portuguese court has jurisdiction, which is determined in the specific case depending on the residence of the spouses and the location of the family home.

12. What is the process for recognising and enforcing foreign financial orders (including orders relating to pensions situated in your jurisdiction)?

Article 21(1) of Council Regulation 2201/2003 of 27 November on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility states that judgments given in one Member State shall be recognised by the other Member States without formalities.

However, it is binding and has direct and immediate application to the Member States of the European Union. Its spatial scope of application is limited, with the exception of Denmark, to judgements handed down by courts in Member States such as: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden (see Recital 31 and Articles 2(3) and 21(1) of the Regulation).

However, the Regulation above mentioned applies to divorce but excludes maintenance orders.

With regards to judgments handed down by courts in most of EU Member States, decisions on maintenance made by most European courts are automatically

recognised and enforceable in our country (European Council Regulation 4/2009 of 18 December).

Differently, judgments handed down by courts from other countries not signatory of the Regulation above must first be recognized in Portuguese Courts so that they are enforceable in Portugal.

Reference should also be given to the Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, that is applied in Portugal, does not establish automatic recognition of judgements or agreements on maintenance.

Said recognition is though possible through the internal procedural rules on recognition of foreign decisions.

After the foreign judgement has been recognized in Portuguese territory, enforcement proceedings can be initiated to guarantee payment of the amounts owed, in particular by attaching assets, whether movable or immovable, located in Portuguese territory, such as bank accounts, shares in companies or immovable property.

13. Are matrimonial property regimes recognised and if so, in what circumstances?

In Portuguese territory, the spouses are free to choose the spousal matrimonial property regime which will apply during their marriage through a pre-nuptial agreement, which may be chosen either by selecting one of the regimes established in the Portuguese Civil Code, which are the following:

- a. *Separation of assets* – in which case the assets remain the full property of the spouse of has acquired them, either before or after marriage.
- b. *General community of assets* – in which case all assets, either acquired prior or after marriage, are considered common assets, apart from specific exceptions, as personal assets.
- c. *Community of acquired assets* – in which case, the assets acquired after marriage are presumed common, excluding assets acquired before marriage as well as heritages or donations, as well as personal assets.

In case the spouses have not executed a pre-nuptial agreement, the default regime is the limited community of property.

Further, the separation of property regime is compulsory where:

- a. The marriage has not been preceded by the

mandatory preliminary marriage procedure.

- b. One of the spouses has reached the age of 60 at the time of the marriage.

Further, parties may establish their pre-nuptial agreement according to their own rules, if imperative rules of law are not violated.

The prenuptial agreement may also contain testamentary provisions and, provided that the spouses opt for the separation of property regime, it can also include the reciprocal renunciation of the status of heir by the spouses.

It is also relevant to note that the matrimonial regime chosen by the spouses or applied in the lack of a choice is immutable, in the sense that it may not be changed by the parties after marriage or upon divorce.

14. How are pre and post nuptial agreements treated? Is it different if the prenuptial or post nuptial agreement was concluded in your jurisdiction (as opposed to another jurisdiction)?

In what relates to foreign marriages, we should also stress that the Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes permits that the couple chooses the law applicable to their matrimonial property regime, before or during the marriage, if they have a relevant connection with the state of the chosen law.

Thus, Portuguese law recognizes foreign contracts, including pre-nuptial and post-nuptial agreements, if they are valid under the law applicable to the matrimonial property regime, all according to the Regulation above mentioned and their set of rules for recognition and enforcement, in particular articles 36 *et seq.*

15. How is maintenance for a child dealt with in your jurisdiction?

According to article 1878, paragraph 1 of the Portuguese Civil Code, parents have a general duty to provide for their children's health, education, and maintenance. In its turn, under article 2003 of the Portuguese Civil Code, the concept of maintenance includes all that is indispensable for a child's sustenance, housing, and clothing. In the case of minors, maintenance also includes expenses with education.

Regarding the amount of maintenance to be paid, the rule under Portuguese law is as follows: the amount will be proportionate to the financial capacity of the providing parent and to the actual needs of the child to be maintained. In other words, a court will look, first and foremost, at the parent's monthly income, as well as their fixed and regular expenses. Secondly, the court will determine what expenses the child has per month (i.e., how much the parents spend on food, clothing, school, and their part in the expenses within the house, such as water, gas, electricity and possibly rent). After that information is gathered, the court will determine an amount that is feasible for the parent to pay, and sufficient to cover the child's needs.

It should also be noted that, unless agreed otherwise between the parties, unless there is an opposing legal norm, or if there is a justified circumstance, maintenance is paid through monthly bank transfers.

In case of divorce or separation, the predominant rule in the Portuguese legal system is one of equality between both parents (Article 36, paragraph 3, of the Portuguese Constitution), which points to a regime of shared custody. As such, in principle, there is no child maintenance to be paid between the parents since they both spend the same time with the child and should each cover the child's expenses when with them. However, this rule has an exception, widely accepted within case law, which is when one parent earns significantly more than the other. In that case, the more financially capable parent should pay the least financially capable parent a certain amount of child maintenance per month. The purpose behind this is to ensure that the standard of living of the child is not dramatically changed when changing from one parent's house to the other.

If, however, a regime of shared custody is not established (for whatever reason), then the parent who does not live regularly with the child must pay child maintenance to the parent that does live with the child.

In accordance with article 2006 of the Portuguese Civil Code, when claiming child maintenance within a judicial proceeding of regulation of parental responsibilities, if the court decides to establish a certain amount of maintenance, then that amount is owed since the date of the beginning of the proceedings, and not since the date the decision is issued. In other words, child maintenance is retroactive.

It is also important to note that the amount of maintenance can be changed at any time by agreement of both parties, or by means of a judicial proceeding, where the party who wants the change has the burden of

proof of demonstrating that circumstances have changed, which justify the alteration of the amount of alimony.

Finally, according to Portuguese law and case law, the obligation to pay child maintenance must be complied with until the child reaches the age of 18, or 25 if they are still completing their studies and are therefore unable to earn a living and provide for themselves.

16. With the exception of maintenance, does the court have power to make any orders for financial provision e.g. housing and/or capital sums for a child? If so, in what circumstances?

Orders for other financial provisions such as housing and/or capital sums are not common in Portugal. First, it should be noted that the court only has the power to make any orders in so far as they are requested by the parties.

Secondly, the law only states that parents must ensure their children's livelihood and well-being, which does not include any special type of housing or capital sum. As such, in principle, the court will not decide on any of these matters.

Nonetheless, under the principle of the private autonomy of the parties, parents are free to make such an agreement between themselves.

17. Are unmarried couple relationships recognised (eg. as a civil partnership?)

Law No. 7/2001, of 11 May, recognizes the legal status of two people who, regardless of the sex, live in conditions similar to married couples for more than two years – the so-called "de facto union".

The article 2 of the law above mentioned sets out the situations that prevent the attribution of rights or benefits, in life or upon death, based on the de facto union:

- a. Age less than 18 years old on the date of recognition of the de facto union;
- b. Notorious dementia, even with lucid intervals and a situation in which a person over the legal age requires adult supervision, if this is established in the court decision that decreed it, unless if those situations are subsequent to the beginning of the union;
- c. Undissolved marriage, unless the separation of people and property has been decreed;

- d. Kinship in the direct line or in the 2nd degree of the collateral line or affinity in the direct line;
- e. Previous conviction of one of the people as perpetrator or accomplice for intentional homicide, even if not consummated, against the spouse of the other.

The de facto union is proven by a declaration issued by the competent parish council, the document must be accompanied by a declaration from both members of the de facto union, under a promise of honour, that they have lived in a de facto union for more than two year and are also needed certificates containing a full copy of the birth registration of each of them.

18. What financial claims, if any, do unmarried couples have when they separate and how are such claims determined i.e. what are the guiding principles?

In the event of separation, those in a de facto relationship have the right to the protection of their family home, as in the case of divorce. In this way, the property must be allocated to the person who needs it most.

There is no legal property regime provided for a de facto union, unlike what happens with marriage. However, some Academics believe that the rules laid down for marriage should be applied by analogy to the de facto union.

For the purposes of dividing assets in the event of separation of de facto partners, the general rules of law applicable between any unknown persons apply.

Therefore, the assets purchased jointly by the couple during the de facto union are divided according to the regimes of co-ownership or unjust enrichment.

19. What is the status of separated parents in relation to their children? Does it make a difference if the parents were never married?

There is absolutely no difference between married and unmarried couples in the status of separated parents in relation to their children. In Portugal, the principle is one of equality between both parents, which points to a regime of shared custody. This is the case whether the parents were once married or not. This principle is not only explicitly established in Article 36, paragraph 3 of the Portuguese Constitution, but also in court decisions and legal doctrine. The focus is the well-being of the child – rendering the situation of the parents irrelevant in this

matter – and it is understood that a child benefits immensely from being in the company of both parents.

20. What are the jurisdictional requirements for child arrangements/child custody?

In Portugal, the first requirement for a court to regulate on the parental responsibilities regarding a child, it is necessary that the child's residence is in the same territory of the court (territorial competence). For instance, a court in Lisbon would not regulate the parental responsibilities of a child residing in Porto.

Every child arrangement/child custody must be approved by the Public Prosecution Office, which is meant to act as the "defender of the children".

The Public Prosecution Office will not approve an arrangement/agreement which does not comply with the protection of the best interest of the child, for example:

- a. Does not establish an amount of alimony to be paid, by the parent who does not reside with the child, to the parent who does reside with the child (in the case of sole custody);
- b. Does not establish any visitation rights to the parent who does not reside with the child, to the parent who does reside with the child (in the case of full custody);
- c. Does not establish vacation periods with each parent in a balanced manner;
- d. Any other clauses that violate the child's best interest.

The "best interest" of a child is a broad and general concept, with no clear definition. However, the Portuguese Supreme Court of Justice has defined it as "an indeterminate legal concept that aims to ensure the most appropriate solution for the child in order to promote their harmonious physical, mental, intellectual and moral development, especially in a family environment, and is therefore measurable according to the circumstances of each case." Meaning that a judge will look at each different case and decide what the best interest of that specific child, in those specific conditions, is, and the arrangement will comply with such interest.

21. What types of orders can the court make in relation to child custody/a child's living arrangements and what are the guiding principles? What steps are followed to hear the voice of the child?

A child's living arrangement will, in principle, be determined with the mother and the father in alternate

weeks (shared custody), with just the mother (with visits from the father), with just the father (with visits from the mother), or, in absolutely exceptional circumstances, the child will be put in the care of a third person or an institution, if their best interest is not fulfilled by living with either parent.

As previously said, the rule in Portugal is shared custody. As such, in the event the parents are not able to reach an agreement, the court will most likely determine a shared custody, which is only possible if the child is not breastfeeding, if the parents live within the same city and if both parents show that they have the necessary abilities to have the custody of the child. However, if the court believes that the conditions for a shared custody are not met, exceptionally, full custody will be given to one of the parents, depending on whoever is "the figure of reference" for that child and will ensure their best interest.

Under Portuguese law, all children over 12 years of age (inclusive) must be heard regarding their custody, whether done by agreement or by a judicial decision. On some occasions, if the custody is determined by a judicial decision, the court may wish to hear a 10-year-old or an 11-year-old, if that specific child shows maturity and the capability of understanding what they are taking part in.

Usually, the child is heard in a friendly and appropriate room (as opposed to a regular trial room), in the presence of the judge, the prosecutor and a psychologist specialised in children and familial conflicts. The parents and their respective lawyers are not present, and the recordings of the session are only shared with them if the child consents to it.

Finally, it should be noted that the opinion of child is greatly valued and taken into consideration, however, the court is not obliged to do what the child wants – in other words, just because the child says they wish to live with one parent does not mean that the court must determine that the child will live with said parent. The court will take the child's opinion into account but is in no way bound by it.

22. What are the rules relating to the relocation of a child within and outside your jurisdiction and what are the guiding principles?

Once the residence of a child is established by court or by an agreement, it can only be altered through another court decision, if the parents disagree regarding such alteration. This also applies to a change of residence from one city to another within Portugal, and from

Portugal to another country.

If one parent wishes to relocate themselves with their child and cannot get the other parent to agree to that, the first parent must make a formal request to court. In that request, the parent must provide arguments as to why the child should leave their habitual residence and move elsewhere. It is enormously hard to remove a child from their habitual residence, however, some grounds for that may include the fact that the parent who wishes to move is considered the child's "primary figure of reference" – the person who takes most care of the child on a day-to-day basis, who has been a constant presence throughout their lives, and who would most likely guarantee the child's best interest. Please note that the idea that this "primary figure of reference" is the mother has long been abandoned in Portugal. If enough evidence is submitted that proves that this figure is the father or both parents (or even a third person), then a decision will be made accordingly.

As mentioned above, a decision to relocate a child is not one that is taken lightly, and therefore other factors must also be considered, such as: (i) how far the new residence is; (ii) how long they are expected to live there; (iii) how much support do the parent and child have in the new residence; (iv) how different is the culture/language of the new residence compared to the old residence; (v) how often can the child travel to their old residence to visit family and friends.

Finally, unless there are substantial circumstances that justify it, provisional measures that imply an abrupt break in any affective relationships of the child should not be adopted, as they clearly go against the best interests of the child.

23. What is the process for recognising and enforcing foreign orders for contact/custody of children? Does your court operate a system of mirror orders?

According to Article 978 of the Portuguese Code of Civil Procedure, without prejudice to what is established in treaties, conventions, European Union regulations and special laws, no judgement on individual rights established by a foreign court shall be effective in Portugal, regardless of the nationality of the parties, unless it has been reviewed and confirmed. Nonetheless, the proceeding of reviewing and confirming said decisions is simple.

The competent court to revise and confirm said judgement is the Court of Appeals of the area in which the

person against whom the judgement is sought is domiciled. Under Article 980 of the Portuguese Code of Civil Procedure, for a judgement to be recognised in Portugal, the following requirements must be met:

- a. There must be no doubt about the authenticity of the document containing the judgement or about the intelligence of the judgement;
- b. The decision has become final, according to the law of the country in which the judgement was given;
- c. The judgement comes from a foreign court whose jurisdiction has not been invoked in a fraudulent manner and does not deal with a matter that falls within the exclusive jurisdiction of the Portuguese courts;
- d. The defence of *lis pendens* or *res judicata* cannot be invoked on the basis of a case before a Portuguese court, unless it was the foreign court that prevented jurisdiction;
- e. The defendant has been duly summoned to the action, in accordance with the law of the country of the court of origin, and the principles of adversarial proceedings and equality of the parties have been observed;
- f. The recognition of the judgement must not lead to a result that is manifestly incompatible with the principles of international public order of the Portuguese State

If the above requirements are met, the judgment will be recognised in Portugal and will thus be enforceable in the exact same way it would be in the country where it was issued.

24. What is the status of surrogacy arrangements and are surrogates permitted to be paid?

In Portugal, surrogacy has been regulated since 2016 through Law 25/2016. However, Law 25/2016, together with Law 32/2006 of 26 July (Law 32/2006) – which regulates medically assisted reproduction practices – has been the target of various criticisms and considerations by doctrine and case law, as well as successive constitutionality reviews by the Constitutional Court.

From the outset, one of the main issues raised in the context of the regulation of surrogate gestation relates to the assumptions and conditions for the validity of the pregnant woman's consent which, some experts say, cannot be assumed to be informed and free consent. After a presidential veto, Law 25/2016 came into force, regulating access to surrogacy and making the third amendment to Law 32/2006. However, this law is still deemed unconstitutional to this day.

Regarding payment of the surrogate, such payments will never be admissible under Portuguese law, except for the amounts corresponding to the expenses arising from the health care provided to the surrogate, including transport, if they are duly documented.

Finally, as of today, surrogacy is not yet fully regulated in the Portuguese legal system, despite the pressure on the government to do so.

25. What forms of non-court dispute resolution (including mediation) are available in your jurisdiction?

Alternative Dispute Resolution Mechanisms include arbitration centres, justices of the peace and public mediation systems. Justices of the peace are special instances in which conflicts relating to contracts, property and other similar situations and consumer disputes, among others, can be settled. Justices of the peace can only decide on disputes worth up to 15,000 euros.

They cannot judge conflicts involving families, inheritances, and employment issues.

Mediation helps people in conflict to communicate and find a solution to the situation, rather than taking the case to court. There is only mediation if the people in conflict want it. Unlike what happens in arbitration courts or justices of the peace, the mediator cannot interfere or decide on the content of the potential agreement. This decision is made by the conflicting parties. The content of mediation sessions is confidential and cannot be used as evidence in court.

There are several public mediation systems, with mediation activities regulated by Law No. 29/2013, of April 19, and mediators must also be governed by the European Code of Conduct for Mediators.

The General Directorate of Justice Policy (DGPJ) manages, on behalf of the Ministry of Justice, several public mediation systems, namely the family mediation system.

Arbitration centres provide information, as well as the possibility of mediation and conciliation to parties in conflict. When the parties involved in the conflict cannot reach an agreement, arbitration takes place. Arbitration is carried out by an arbitration court, which is usually organized and regulated by an arbitration centre, however the parties may also choose to set up an *ad hoc* arbitral tribunal where the parties organize and determine the arbitration rules themselves.

Anyone wishing to resolve disputes that have already arisen can resort to arbitration by signing an arbitration agreement and, on the other hand, to prevent possible disputes in the future, the parties can include an arbitration clause in the contracts they are going to sign.

Conciliation is a method of resolving disputes, in which the parties to the conflict accept the intervention of a third party (conciliator) to help them find a peaceful solution to the dispute.

The conciliator has a more active role than the mediator in finding a solution to the conflict but must always maintain a neutral and impartial position.

This is the difference between conciliation and mediation. The mediator promotes dialogue between the parties, who build a solution to the conflict without the mediator's interference.

The conciliator promotes the reestablishment of dialogue between the parties and can also suggest a peaceful solution to the conflict in question.

Of all these NCDRs, the only one used for topics related to family law and minors is mediation.

Contributors

Magda Fernandes
Partner

mmfernandes@mlgts.pt



Francisca Robalo Cordeiro
Principal Associate

frcordeiro@mlgts.pt



Madalena Diniz de Ayala
Associate

mayala@mlgts.pt

