



Tax & Business Lawyers

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NATIONALITY LAW AND CONSTITUTIONAL LIMITS

The recent ruling by the Constitutional Court did not invalidate the reform of the Nationality Law, but it did put the brakes on it, making it clear that, in matters of nationality, the political margin ends where legal predictability and the protection of applicants' trust begin.

Litigation Team



THE CONTEXT

The recent [ruling by the Constitutional Court](#) did not resolve the debate on [amendments to the Nationality Law](#). However, it redefined the constitutional space within which this debate can continue.

Far from ruling out a legislative review of [the Nationality Law](#), the Court has defined the constitutional parameters within which this reform may proceed, censuring solutions that it considered incompatible with the principles of trust, proportionality, and legal certainty.

The decision shows that the discussion surrounding Portuguese nationality is not limited to the definition of political options. Rather, it requires a particularly rigorous normative construction, capable of balancing the legislator's freedom of conformation with the protection of the legally relevant expectations of applicants.

THE CONSTITUTIONAL COURT'S RULING

The Constitutional Court ruled that several provisions of [the law introducing significant changes to the Nationality Law](#) were unlawful, on the grounds that some of the proposed solutions violated fundamental principles of the Constitution, namely the principle of trust and the requirements of proportionality and normative determinability.

Among the provisions considered unlawful is the one that made the granting of Portuguese nationality conditional on the absence of a final conviction for a crime punishable under Portuguese law with a jail judgment of two years or more. The Court considered that this solution constituted an automatic exclusion, without room for individual assessment of the specific circumstances, which was incompatible with the principle of proportionality.

The rule allowing opposition to the acquisition of nationality based on behavior demonstrating rejection of the national community, its institutions, or its symbols was also declared unlawful. In the Court's view, the breadth and vagueness of this criterion compromised the predictability required in matters affecting the personal status of individuals.

The rule allowing for the reversal of the acquisition of nationality when it had been obtained in a manifestly fraudulent manner was also censured, due to a lack of sufficient normative density and the uncertainty it could generate regarding the stability of the legal status acquired.

In addition, the rule involving the regime applicable to pending applications was declared unlawful, to that extent as the attempt to give interpretative nature to the application of certain requirements raised significant problems of legal certainty.

The Court also considered the repeal of the rule, currently in force, according to which the period of residence relevant for the acquisition of nationality is counted from the moment of application for a temporary residence permit, provided that it is granted.

Despite upholding the current legislative rules for calculating the period, the court's reasoning underscores the principle of good faith and the protection of expectations, setting a standard that all future amendments must follow.

THE CONSEQUENCES

Following the Constitutional Court's decision, the [Portuguese President vetoed the bill under consideration](#), returning it to the Assembly of the Republic for further consideration and possible reformulation.

The immediate effect was the full maintenance of the current wording of [the Nationality Law](#), continuing to provide for the possibility of granting Portuguese nationality to legal residents in Portugal for at least five years.

It should also be noted that the Court did not rule on the possible increase in the period of residence to seven years in the case of citizens of countries belonging to the Community of Portuguese-speaking Countries (CPLP) or the European Union, and to ten years in other cases, with this discussion remaining strictly at the political and legislative level.

In practical terms, the ruling has a dual effect: on the one hand, it reaffirms the legislator's freedom to reform the nationality regime; on the other, it imposes clear limits on legislative technique, the protection of trust, and the need for legally determined criteria.

While the bill returns to the Assembly of the Republic, the system remains in a phase of provisional legal stability, in which the current regime remains fully applicable, but the debate on its future remains open.

CONCLUSION

Rather than blocking the reform, the Constitutional Court has forced the legislator to reformulate it in terms that are technically more rigorous and constitutionally more predictable.

The debate on Portuguese nationality will continue, but now within a more defined legal framework, where the protection of trust and the quality of legislative technique play a central role.

Until then, the stability of the current regime coexists with an inevitable uncertainty regarding the final design of the next legislative solution.

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