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## Portugal \*

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**Resumo:**

Este capítulo apresenta o quadro legal e regulador relativamente às línguas minoritárias em Portugal. Trata-se de um trabalho realizado no âmbito de um projecto intitulado 'Minority-language Related Broadcasting and Legislation in the OECD' e levado a cabo pelo Programme in Comparative Media Law and Policy, Oxford University e pelo Institute for Information Law Study, Amsterdam University.

**Key words**

Minority languages, Broadcasting, Legislation, Regulation, Law, Rights

**Minority-Language Related Broadcasting in the OECD****PCMLP (Programme in Comparative Media Law and Policy, Oxford University)  
Study for the OECD High Commissioner on National Minorities****Portugal****Introduction**

Portuguese is the official language of the country and the entire population speaks Portuguese. In the Northeast, there is a small community (around 7000 people) speaking Portuguese and *Mirandês*, a roman language recently recognised by the Portuguese state<sup>1</sup>. The state is not concerned with linguistic minorities because all the Portuguese citizens share the same language. In Portugal there are however non-Portuguese speakers, namely foreigners and immigrants, but no attention has been given to their linguistic rights.

The Portuguese media express themselves in Portuguese. There is only one programme in *Mirandês* in a local radio (*Rádio Mirandum.FM*). In these circumstances, the government is not involved in the development of any sort of minority languages policy regarding broadcasting.

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<sup>1</sup> Please see [www.mirandes.no.sapo.pt](http://www.mirandes.no.sapo.pt)

## Constitution

The Portuguese Constitution (*Constituição da República Portuguesa*<sup>2</sup>) does not mention specific linguistic minority rights. However, constitutional rights apply equally to all Portuguese citizens.

### a) Freedom of Expression

Four constitutional articles (37º, 38ª, 39º and 40º) are dedicated to with freedom of expression (annex 1). Article 37 (Freedom of expression and information) says (in its point 1) that everyone has the right to express and publicise his or her thoughts freely, by words, images or any other means. Moreover, all have the right to inform, to inform themselves and to be informed, without hindrance or discrimination. Point 2 of the same article states that the exercise of these rights shall not be limited by any form of censorship.

Article 38 (Media and Press Freedom) is specially dedicated to freedom of the press. It does not merely guarantee press freedom but it also says what this freedom entails. It refers to the journalists freedom, the journalists access to information, the right to set up newspapers and other publications, the disclosure of media ownership, the existence of a radio and television public service, among other inter-related rights.

Article 39 contemplates the High Authority for the Media whose main task is to guarantee press freedom. Article 40º relates to right to reply.

### b) Broadcasting

Point 5 of article 38 states that the state is the guarantee of the existence and operation of a public radio and television service. Point 7 of the same article says that radio and television broadcasters require a licence and a public competition, according to the law.

### c) Minority rights

No special attention is given to minority rights. The Constitution is based on equalitarian principles. Article 13 (point 1) refers that all citizens have the same social dignity and are equal before the law. Point 2 of the same article says that no one can be privileged or favoured, or discriminated against or deprived of any right or exempted from any duty by reason of his or her ascentry, sex, race, language, territory

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<sup>2</sup> *Constituição da República Portuguesa*, 1976 (last revision: 1997) in [www.parlamento.pt/leis/constituicao\\_port/crp\\_97\\_1html](http://www.parlamento.pt/leis/constituicao_port/crp_97_1html)

of origin, religion, political or ideological conviction, level of formal education, economic or social circumstances.

d) Official language

The Constitution's article 11 which is dedicated to the nation symbols and to the official language says in point 3 that «Portuguese is the official language».

## Legislation

### I General legislation affecting minorities and their linguistic rights

So far, only *Mirandês* was legally recognised as a minority language. Spoken by merely 7000 people in the Northeast of the country (see <http://mirandes.no.sapo.pt/Lmdefinicao.html>), *Mirandês* was contemplated in Law nº 7/99 of 29 January (<http://mirandes.no.sapo.pt/LMPSlei.html>). In this law, the Portuguese state recognise the right to promote and teach this language.

### II Broadcasting Legislation

The broadcasting legislation in Portugal do not consider minority language rights. The television Law (Law nº 31-A/98 of 14 July, see [www.secs.pt](http://www.secs.pt)) only refers the Portuguese language when expressing the main objectives of television broadcasting. In article 8, 1, d) it is said that it is a general objective of the television broadcasting activity the promotion of the Portuguese language and the promotion of values which incorporate the Portuguese national identity.

Similarly, the Radio Law (Law nº 4/2001 of 23 February, see [www.secs.pt](http://www.secs.pt)) also states in its article 9, d, that one of the objectives of radio broadcasting is the promotion of the Portuguese culture and language, as well as the values which express the Portuguese national identity.

### Application of legislation and other informal measures affecting language

The existing legislation does not have any significant relevance concerning linguistic rights. Apart from *Mirandês*, which has gained an official status and might be taught in schools, the state seems particularly concerned with the protection of the Portuguese language. It should be noticed that the legislation does not forbid, in any way, the private or public expression in minority or foreign languages.

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## Annex 1

### Artigo 37.º

#### (Liberdade de expressão e informação)

1. Todos têm o direito de exprimir e divulgar livremente o seu pensamento pela palavra, pela imagem ou por qualquer outro meio, bem como o direito de informar, de se informar e de ser informados, sem impedimentos nem discriminações.
2. O exercício destes direitos não pode ser impedido ou limitado por qualquer tipo ou forma de censura.
3. As infracções cometidas no exercício destes direitos ficam submetidas aos princípios gerais de direito criminal ou do ilícito de mera ordenação social, sendo a sua apreciação respectivamente da competência dos tribunais judiciais ou de entidade administrativa independente, nos termos da lei.
4. A todas as pessoas, singulares ou colectivas, é assegurado, em condições de igualdade e eficácia, o direito de resposta e de rectificação, bem como o direito a indemnização pelos danos sofridos.

### Artigo 38.º

#### (Liberdade de imprensa e meios de comunicação social)

1. É garantida a liberdade de imprensa.
2. A liberdade de imprensa implica:
  - a) A liberdade de expressão e criação dos jornalistas e colaboradores, bem como a intervenção dos primeiros na orientação editorial dos respectivos órgãos de comunicação social, salvo quando tiverem natureza doutrinária ou confessional;
  - b) O direito dos jornalistas, nos termos da lei, ao acesso às fontes de informação e à protecção da independência e do sigilo profissionais, bem como o direito de elegerem conselhos de redacção;
  - c) O direito de fundação de jornais e de quaisquer outras publicações, independentemente de autorização administrativa, caução ou habilitação prévias.
3. A lei assegura, com carácter genérico, a divulgação da titularidade e dos meios de financiamento dos órgãos de comunicação social.
4. O Estado assegura a liberdade e a independência dos órgãos de comunicação social perante o poder político e o poder económico, impondo o princípio da especialidade das

empresas titulares de órgãos de informação geral, tratando-as e apoiando-as de forma não discriminatória e impedindo a sua concentração, designadamente através de participações múltiplas ou cruzadas.

5. O Estado assegura a existência e o funcionamento de um serviço público de rádio e de televisão.

6. A estrutura e o funcionamento dos meios de comunicação social do sector público devem salvaguardar a sua independência perante o Governo, a Administração e os demais poderes públicos, bem como assegurar a possibilidade de expressão e confronto das diversas correntes de opinião.

7. As estações emissoras de radiodifusão e de radiotelevisão só podem funcionar mediante licença, a conferir por concurso público, nos termos da lei.

### **Artigo 39.º**

#### **(Alta Autoridade para a Comunicação Social)**

1. O direito à informação, a liberdade de imprensa e a independência dos meios de comunicação social perante o poder político e o poder económico, bem como a possibilidade de expressão e confronto das diversas correntes de opinião e o exercício dos direitos de antena, de resposta e de réplica política, são assegurados por uma Alta Autoridade para a Comunicação Social.

2. A lei define as demais funções e competências da Alta Autoridade para a Comunicação Social e regula o seu funcionamento.

3. A Alta Autoridade para a Comunicação Social é um órgão independente, constituído por onze membros, nos termos da lei, com inclusão obrigatória:

- a) De um magistrado, designado pelo Conselho Superior da Magistratura, que preside;
- b) De cinco membros eleitos pela Assembleia da República segundo o sistema proporcional e o método da média mais alta de Hondt;
- c) De um membro designado pelo Governo;
- d) De quatro elementos representativos da opinião pública, da comunicação social e da cultura.

4. A Alta Autoridade para a Comunicação Social intervém nos processos de licenciamento de estações emissoras de rádio e de televisão, nos termos da lei.

5. A Alta Autoridade para a Comunicação Social intervém na nomeação e exoneração dos directores dos órgãos de comunicação social públicos, nos termos da lei.

### **Artigo 40.º**

#### **(Direitos de antena, de resposta e de réplica política)**

1. Os partidos políticos e as organizações sindicais, profissionais e representativas das actividades económicas, bem como outras organizações sociais de âmbito nacional, têm direito, de acordo com a sua relevância e representatividade e segundo critérios objectivos a definir por lei, a tempos de antena no serviço público de rádio e de televisão.
2. Os partidos políticos representados na Assembleia da República, e que não façam parte do Governo, têm direito, nos termos da lei, a tempos de antena no serviço público de rádio e televisão, a ratear de acordo com a sua representatividade, bem como o direito de resposta ou de réplica política às declarações políticas do Governo, de duração e relevo iguais aos dos tempos de antena e das declarações do Governo, de iguais direitos gozando, no âmbito da respectiva região, os partidos representados nas assembleias legislativas regionais.
3. Nos períodos eleitorais os concorrentes têm direito a tempos de antena, regulares e equitativos, nas estações emissoras de rádio e de televisão de âmbito nacional e regional, nos termos da lei.

## Translation

### ARTICLE 37

#### **Freedom of expression and information**

1. Everyone has the right to express and publicise his or her thoughts freely, by words, images or other means, and the right to impart, obtain and receive information without hindrance or discrimination.
2. The exercise of these rights shall not be prevented or restricted by any kind or form of censorship.
3. Offences committed in the exercise of these rights are punishable under the general principles of criminal law or of the law relating to regulatory offences; jurisdiction to try them lies, respectively, with the courts of law or an independent administrative body, in accordance with the law.
4. The rights to reply and to make corrections, and the right to compensation for loss suffered, shall be equally and effectively guaranteed to all individuals and corporate persons.

### ARTICLE 38

#### **Freedom of the press and mass media**

1. Freedom of the press is guaranteed.
2. Freedom of the press comprises:
  - a. The freedom of expression and creativity for journalists and collaborators and, as a function of the journalist, the giving of editorial direction to the relevant mass media, except where the latter are doctrinal or denominational in character;
  - b. The right of journalists to have access to information sources, to protection of their professional independence and confidentiality, and to elect editorial councils, in accordance with the law;

- c. The right to found newspapers and other publications, without prior administrative authorisation, deposit or qualifications.
3. The law shall require, in general terms, the disclosure of the ownership, and the means of financing, of the mass media.
4. The State shall guarantee the freedom and independence of the mass media from political and economic powers; it shall impose the principle of speciality upon companies that own general information media; it shall treat and support those companies in a non-discriminatory manner and shall prevent their concentration, in particular through multiple or inter-locking financial interests.
5. The state shall guarantee the existence and operation of a public radio and television service.
6. The mass media in the public sector shall be so structured and operated as to be independent of the Government, the Public Service and other public bodies, and to guarantee opportunities for the expression of, and challenge to, different lines of opinion.
7. Radio and television stations shall operate only under a licence granted for the purpose after a public competition, in accordance with the law.

#### ARTICLE 39

##### **High Authority for the Mass Media**

1. The High Authority for the Mass Media shall guarantee the right to information, the freedom of the press, the independence of the mass media from political and economic powers, opportunities for expression of, and challenges to, different lines of opinion, and the exercise of the right to broadcasting time, the right of reply and the right of political argument.
2. The law shall determine all other functions and competence of the High Authority for the Mass Media and shall regulate its functioning.
3. The High Authority for the Mass Media shall be an independent body, composed, in accordance with the law, of 11 members, as follows:
  - a. One judge appointed by the Superior Council for the Judiciary, who shall preside;
  - b. 5 members elected by the Assembly of the Republic by a system of proportional representation and the Hondt highest average method;
  - c. 1 member appointed by the Government;
  - d. 4 members representing public opinion, the mass media and the arts.
4. The High Authority for the Mass Media shall participate in the procedures for licensing of radio and television channels, in accordance with the law.
5. The High Authority shall participate in the appointment and dismissal of directors of the public mass media, in accordance with the law.

#### ARTICLE 40

##### **Right to broadcasting time, to reply and to political argument**

1. Political parties, trade unions, professional organisations and organisations representing economic interests, as well as other nationally based social organisations, have the right to



broadcasting time on publicly owned radio and television, to the extent to which they are relevant and representative and meet the objective criteria that shall be prescribed by the law.

2. Political parties represented in the Assembly of the Republic, but not in the Government, have the right to broadcasting time on publicly owned radio and television, in proportion to their representation, and have the right to reply and to political argument with respect to the political statements of the Government, as provided by law. The grant of the exercise of those rights shall be equivalent, in length and relevance, to that granted to the Government. Parties represented in the regional legislative assemblies shall enjoy the same rights at the level of their region.

3. During elections, candidates have the right to regular and equitable broadcasting time on radio and television stations of national and regional importance as provided by law.