



**British Institute of  
International and  
Comparative Law**

# COLLECTIVE REDRESS PORTUGAL



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**British Institute of  
International and  
Comparative Law**

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The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

#### Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

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# I. General Collective Redress Mechanism

## 1. Scope/ Type

*Ação popular* (popular action), regulated by Law 83/95, of August 31st is a horizontal collective redress mechanism. The mechanism is both injunctive and compensatory.

## 2. Procedural Framework

### a. Competent Court

The competent court depends on the nature of the dispute. If administrative rules are applicable, administrative courts are competent. If the conflict is regulated by private law (in a very broad sense), the civil courts are competent.

### b. Standing

Any citizen in the enjoyment of their civil and political rights has standing, as well as associations and foundations that defend the interests referred to above, regardless of whether or not they have a direct interest in the dispute (e.g. Associação Portuguesa para a Defesa do Consumidor (DECO) (Portuguese Association for Consumer Protection), Quercus - Associação Nacional de Conservação da Natureza (National Association for Nature Conservation)). This is also stated by Article 31 of the Civil Procedure Code.

### c. Availability of Cross Border collective redress

Foreign parties are permitted engage in collective redress. There are no specific rules applicable to foreign parties.

### d. Opt In/ Opt Out

The Portuguese popular action is fundamentally an opt-out system. This is set out in Articles 14 and 15 of Law 83/95, of August 31st. Opt-out is not restricted to in-jurisdiction claimants.

The claimant represents and may act on behalf of the group affected without the need for a mandate or express authorization. Following the initiation of the procedure by the entity with standing, the interested parties are notified and they must, within the term fixed by the judge:

- (a) intervene in the main proceedings;
- (b) declare whether they agree to be represented by the claimant; or
- (c) declare that they do not agree to be represented by the claimant and thereby exclude themselves from representation, in which case, the final decision will not be applicable to them.

Where an interested party does not respond to the notice within the permitted period, they are considered to have accepted the claimant's representation. Nevertheless, representation can be expressly refused by interested entities until the end of the collection of evidence, or equivalent stage.

The Public Prosecutor (*Ministério Público*) is responsible for protecting the interests of the individuals represented by the claimant and the legality of the proceedings. Under Article 16, no.3 of Law 83/95, of 31 August, it has the power to replace the representative claimant where it withdraws from the proceedings or in instances where its conduct is harmful to the interests at stake.

### e. Main procedural rules

Admissibility and certification criteria: There are no provisions on certification in the Law 83/95, of August 31st. The claimant represents all parties interested in the process. However, under Article 13 the judge may dismiss the action if, following consultation with the public prosecutor and the completion of any preliminary inquiries, it is considered highly improbable that it will succeed. Both the public prosecutor and the claimant may request preliminary inquiries or they may be made of the court's own initiative.

Single/multi stage procedure: Civil popular action takes "(...) any of the forms provided for in the Civil Procedure Code" (Article 12, no. 3 of Law 83/95, of August 31st). The action is, therefore, declaratory, condemnatory or constitutive (Article 4, no. 2 of the Civil Procedure Code) depending on the interests involved. After the

publication of Law 41/2013, June 26, which entered in to force on September 1, 2013, there is a single form for the declarative processes. The main phases are as follows:

1. Petition;
2. Defence;
3. Reply (by the plaintiff only in case of counterclaim);
4. Preliminary hearing;
5. Final hearing;
6. Decision.

All these phases are equally applicable to a collective redress action.

Evidence/discovery rules: As far as the Portuguese system is concerned, the most important stage is the *audiência de discussão e julgamento* (final hearing with oral discussion), conducted by the judge or judges. This includes the taking of evidence and also applies for the popular action. Nevertheless, Article 17 of Law 83/95, of August 31st states that within the range of the fundamental questions defined by the parties, the judge is responsible for his own enterprise on collecting evidence, and not being obliged by the will of the parties.

Control in case of settlement: Settlement is actively encouraged by the judge at every stage of the proceedings and, in particular, during the preliminary hearings. Furthermore, a preliminary hearing may be convened specifically for the purpose of facilitating settlement between the parties.

Whilst there is no court control over the settlement discussions between the parties the Public Prosecutor may replace the claimant where it is deemed to be acting in a way which is harmful to the interests at stake. This may include an unfavourable settlement or settlement discussions.

### 3. Available Remedies

The full range of remedies available under the Code of Civil Procedure are also available in a group action. This includes both compensatory damages and injunctive orders as well as declaratory judgments, punitive or non-compensatory damages however, are not recoverable. Civil liability for compensatory damages may be based on fault but can also be awarded regardless of fault where, for example, the conduct derives from a dangerous activity. According to Article 22 of Law 83/95, of August 31st, group members are entitled to receive compensation under the general liability rules within three years of the judgment with any unclaimed amounts revert to the Ministry of Justice.

Again, interim remedies may be obtained under the Code of Civil Procedure.

In addition, Article 25 of Law 83/95, of August 31st, states that the claimant in a popular action can make a claim to the Public Prosecutor (*Ministério Público*) and can also join criminal proceedings against the defendant.

### 4. Costs

Preliminary costs are not demanded against the claimant. Following judgment, the claimant is exempted from any payment where there has been a favourable or even a partially favourable judgment. In cases where there is a no favourable judgement, costs are decided by the court, up to a maximum of 50% of regular costs, taking into account the economic situation of the claimant and the grounds for the unfavourable judgement.

### 5. Lawyers' Fees

Contingency fees are not allowed under the Portuguese legal system (article 106 of the Bar Association Statute, approved by Law 145/2015, of September 9th).

### 6. Funding

The starting point for funding in Portugal is that it must be provided by the claimant either out of its own funds or using the resources of the individual group members themselves. Third party funding is not regulated, and although it is not prohibited it is rarely used in practice and is seldom available.

Public funding, however, is available under the general terms applicable to all processes and courts, where the defendant can show grounds for economic necessity. (Law 34/2004, of July 29th). For the purposes of this law 34/2004, of July 29th, a party is in economic insufficiency where, having regard to the income, wealth and permanent expenditure of his household, it has no objective conditions to support the costs of a judicial procedure.

Funding control is public and carried out by the Portuguese Social Security public institute (Instituto da Segurança Social). All applicants that have their funding rejected by Social Security may review that administrative decision in the Administrative Courts. The Court where the action is being conducted has no jurisdiction to approve or reject funding proposals itself..

## 7. Enforcement of collective actions/settlements

There are no specific rules regarding the enforcement of collective actions and settlements and as such these fall to be enforced under the rules specified in the Code of Civil Procedure. Under the general rules, judicial decisions are considered sufficient title for enforcement. Therefore, where a judgment following a class action defines an amount to be paid by the defendant(s), their patrimony may be apprehended and sold by the Court in order to satisfy the judgment debt.

## 8. Number and types of cases brought/pending

Information not available.

## 9. Impact of the Recommendation/Problems and Critiques, including

### a. Consequences where no collective redress mechanism is available

Not applicable.

### b. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

Not applicable.

### c. Incompatibilities with the Recommendation's principles

Portuguese legislation is incompatible with the recommendation in two respects:

Firstly, the popular action in Portugal is based on an opt-out system whereas paragraph 21 of the commission recommendation states that the claimant party should be based on an opt-in principle.

Secondly, in Portugal standing is granted not only to non-profit entities whereas paragraph 4(a) of the recommendation requires representative parties to have a non-profit making character.

### d. Problems relating to access of justice/fairness of proceedings including

Nothing to report

## II. Sectoral Collective Redress Mechanism

### A. Consumer law

#### 1. Scope/ Type

Article 12 no. 4 and 5 of Law 24/96, of July 31<sup>st</sup>, stipulates that the consumer has the right to receive compensation for patrimonial damage or non-patrimonial damage caused by defective products or services.

#### 2. Procedural Framework

##### a. Competent Court

Civil courts.

##### b. Standing

Article 13, b) and c) of Law 24/96, of July 31<sup>st</sup> grants standing to consumers and consumers' associations although not directly injured, under the terms of Law 83/95, of August 31<sup>st</sup>, to the Public Prosecutor (*Ministério Público*) and the Institute for the Consumer.

##### c. Availability of Cross Border collective redress

There are no particularities to report.

##### d. Opt In/ Opt Out

The same system as in popular action.

##### e. Main procedural rules

The same rules as in popular action.

#### 3. Available Remedies

The same as described for popular action. Also, according to Law 24/96, of July 31<sup>st</sup>, injunctions may be ruled by the Court, for the prevention, correction or cessation of practices which are harmful to the rights of consumers, including the prohibition of using general contractual terms

#### 4. Costs

The same rules as described for popular action.

#### 5. Lawyers' Fees

The same rules as described for popular action.

#### 6. Funding

The same rules as described for popular action.

#### 7. Number and types of cases brought/pending

Information not available.

#### 8. Impact of the Recommendation/Problems and Critiques, including

##### a. Consequences where no collective redress mechanism is available

Not applicable.

##### b. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

Not applicable.



#### c. Incompatibilities with the Recommendation's principles

The same, as described for popular action.

#### d. Problems relating to access of justice/fairness of proceedings including

Nothing to report

## B. Financial Market Law

### 1. Scope/ Type

Decree-Law 486/99, of November 13th, approved the Securities Code. Articles 31 and 32 stipulate the possibility of using the popular action for the protection of homogeneous individual interests or collective interests of investors in securities.

### 2. Procedural Framework

#### a. Competent Court

Civil courts.

#### b. Standing

Claims may be brought by non-institutional investors, associations for the protection of investors and foundations whose purpose is the protection of investors in securities.

For an association to have standing they must have the protection of the interests of investors in securities as the principal goal of their functioning. In addition, they must also have at least 100 members who are natural persons, and who are not institutional investors. An organisation must have been in operation for more than a year, as stipulated by article 32 of Decree-Law 486/99, of November 13th.

#### c. Availability of Cross Border collective redress

There are no particularities to report.

#### d. Opt In/ Opt Out

The mechanism is opt-in, as described above for the popular action.

#### e. Main procedural rules

The same rules as in popular action.

### 3. Available Remedies

The same as described for popular action.

### 4. Costs

The same rules as described for popular action.

### 5. Lawyers' Fees

The same rules as described for popular action.

### 6. Funding

The same rules as described for popular action.

### 7. Number and types of cases brought/pending

Information not available.

### 8. Impact of the Recommendation/Problems and Critiques, including

#### a. Consequences where no collective redress mechanism is available

Not applicable.

- b. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

Not applicable.

- c. Incompatibilities with the Recommendation's principles

The same, as described for popular action.

- d. Problems relating to access of justice/fairness of proceedings including

Nothing to report

## C. Environmental Law

### 1. Scope/ Type

Under Article 45 of Law 11/87, of April 7th (Framework Law on the Environment), the protection of environmental values may be achieved using popular action and all its instruments and rules.

### 2. Procedural Framework / Costs / Funding

Actions in environmental cases are conducted according to the framework set out above in relation to the Popular Action. The same rules on costs and funding of proceedings apply.

## III. Information on Collective Redress

### 1. National Registry

Not available

### 2. Channels for dissemination of information on collective claims

Not available

## IV. Case summaries

<p><b>Case</b> <i>“Dulce Pontes Bizet's Carmen”</i></p> <p><b>Subject area:</b> <b>Consumer law</b></p>	<p><b>Summary</b></p> <p>In 1998, several 'outdoors' and newspapers publicized the show "Bizet's Carmen," with singer Dulce Pontes main interpreter to act in a rotating stage at Campo Pequeno in Lisbon. The show ended up being performed by the London Philharmonic Orchestra, who played some excerpts from opera, in a stage was not rotating.</p> <p>Hundreds of spectators found themselves defrauded when. After the refusal of the promoter of the show to return the money from tickets, the Court gave reason to the claimant, DECO (Portuguese Association for Consumer Protection).</p>
<p><b>Court</b></p>	<p>After 'res judicata' (in 2006), consumers should to Portugal Meydis Advertising Direct a registered letter and a copy of the ticket for refund.</p>

<p><b>Case</b> <i>“Opening School”</i></p> <p><b>Subject area:</b> <b>Consumer law</b></p>	<p><b>Summary</b></p> <p>In 2002, DECO has received numerous complaints from consumers who faced the closure of Opening School (School of English), teaching in various parts of the country, leaving about 1,200 students without the possibility to continue their studies.</p> <p>When registering, Opening School, had a contract with two payment options: immediate or by entering into a contract of consumer credit (provided by BBVA Finanziamento) which, when executed, remained in force despite the closure of this school.</p>
<p><b>Court</b></p>	<p>In 2010, the Supreme Court of Justice (STJ) gave reason to DECO ruling against Opening Scholl and BBVA Finanziamento and determining these institutions to reimburse consumers.</p> <p>It was not necessary to reinforce the decision due to a settlement agreement between DECO, Opening Scholl and BBVA Finanziamento.</p> <p>DECO provided templates of letters for consumers to claim refund.</p>

<p><b>Case</b> <i>“Digital Terrestrial Television (DTTV)”</i></p> <p><b>Subject area:</b> <b>Consumer law</b></p>	<p><b>Summary</b></p> <p>DECO enacted in Lisbon Administrative Court an action against ANACOM - National Communications Authority, due to damage caused to consumers by failures in the process of transition from analog television signal for Digital Terrestrial Television (DTTV).</p> <p>Damage arising from the fact that ANACOM has not fulfilled the duties he was responsible in planning, monitoring and overseeing the implementation of DTTV to ensure the continuity of the television signal.</p>
<p><b>Court</b></p>	<p>DECO petitioned a global amount of 42 million euros to compensate consumers affected.</p>

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