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INFORMATIVE NOTE

DISPUTE RESOLUTION

Criminal procedure reform: what is changing?

What is at stake?

On 12 June 2026, the Assembly of the Republic approved the final text relating to Bill 54/XVII/1, amending the Code of Criminal Procedure, the Criminal Code and the Regulation on Court Costs. The legislation is now awaiting promulgation by the President of the Republic and could still be subject to a political veto or preventive constitutional review.

This reform follows public and institutional debates about the length of criminal proceedings, particularly in highly complex cases, and the need to balance greater procedural speed with preserving the rights of the defence and the right to a fair trial.

The stated aim is to reduce procedural delays, strengthen active case management, and limit procedural motions or acts that are manifestly unfounded or dilatory (intended to delay proceedings). The main question is whether these objectives can be achieved without unduly curtailing the rights of the defence.

The ten main changes

Active case management

One of the most fundamental changes introduced by the reform is the establishment of a duty of procedural management and oversight assigned to the presiding judge. This means that the presiding judge must actively direct the proceedings, ensuring that the case progresses swiftly and that any irrelevant or merely dilatory submissions are rejected. After hearing the parties involved, the judge must take steps to streamline the proceedings without affecting rights, freedoms, and guarantees.

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In practice, this strengthening takes the form of specific powers distributed across various stages of the proceedings. For example, during the trial, the judge may prevent irrelevant or dilatory interventions and direct the proceedings more actively. They may also order that submissions relating to matters irrelevant to the immediate continuation of the hearing be made in writing.

Alongside this increase in powers comes an equally significant change: many of these decisions are no longer immediately appealable unless a violation of rights, freedoms or guarantees is at issue.

The Portuguese Bar Association had previously criticised this provision. It considered this to be partly redundant in view of the powers of direction and discipline already provided for in the Code of Criminal Procedure. The Bar Association also argued that the lack of appealability could unduly restrict the right of appeal in cases where decisions affect the discovery of the truth or the effective exercise of the defence.

Time limits in exceptionally complex proceedings

The reform introduces a significant overhaul of the time limit system, particularly in exceptionally complex proceedings. It aims to reduce the flexibility that often characterised proceedings and impose greater discipline in managing procedural timelines.

The new system significantly reduces judicial discretion in specific cases, retaining it only to a limited extent for appeals against final decisions and the respective responses.

At the same time, procedural acts performed within the first three working days after the time limit expires remain permitted. However, the validity of such acts now hinges on the immediate payment of the applicable fine.

The practical effect is clear: time limits have become stricter, requiring greater internal discipline and leaving less scope for reactive responses. The Bar Association strongly criticised this point. It argued that the rigidity of the time limits could compromise the effective exercise of the rights of defence and appeal, particularly in exceptionally complex cases. The Bar Association also warned that this could exacerbate the imbalance of power between the prosecution and the defence.

Nullities and the judicial review stage

The reform stipulates that nullities relating to the investigation stage must be raised within a more limited timeframe (nullities are procedural defects that can affect the validity of procedural acts). It also reinforces the formal requirements for requests to open the judicial review stage (instrução).

Any nullities that arise during the preliminary investigation must be pleaded in the application to open a judicial review. If no judicial review is to be held, the pleas must be raised by the deadline for submitting such an application. If a judicial review is requested by any party to the proceedings, the judge responsible for the review stage will consider all grounds for nullity raised within the time limit.

In practice, this requires an exhaustive review of the case file at the end of the preliminary investigation. The scope for raising grounds for nullity at a later stage is significantly reduced. This emphasises the importance of providing an early and well-structured technical response. Furthermore, applications to open a judicial review are now subject to stricter formal requirements. They must be set out in numbered paragraphs and specify the facts to be examined and the relevant evidence.

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Indictment, defence and pleading by numbered paragraphs

The reform also introduces a more structured approach to presenting the indictment and the defence. This aims to clarify the scope of the facts, the evidence and the subject matter of the proceedings.

The indictment must now be organised in numbered paragraphs and include an indication of the evidence to be produced or requested. In cases of exceptional complexity, the Public Prosecution Service must also indicate the evidence it considers most relevant alongside each numbered paragraph or set of paragraphs.

The same approach applies to the defence: if they wish, defendants may submit a defence organised by numbered paragraphs, accompanied by an indication of the evidence to be produced or requested.

The Bar Association recognised the merit of this approach, as it facilitates understanding of the charges and the conduct of the defence. However, the Bar Association argued that the obligation to list facts and evidence should apply to all cases, not just those of exceptional complexity.

Evidence at trial

The reform strengthens the preliminary assessment of the evidence to be presented at trial. It also introduces mechanisms designed to make the hearing more focused and efficient.

Firstly, the presiding judge will carry out a preliminary assessment of the evidence requests submitted by the parties involved in the proceedings. They may reject evidence where the legally prescribed grounds are met. These include irrelevance, redundancy, unsuitability, impossibility, and an attempt to delay proceedings.

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As a general rule, the list of witnesses is now subject to a limit of 20. This limit may only be exceeded if there is a substantiated request to establish the material truth. This applies especially to cases involving particularly serious crimes or proceedings of exceptional complexity.

The prosecution may indicate any previous statements it intends to read out or reproduce at the hearing. If no objection is raised by the other parties to the proceedings, those who made the statements do not need to be called to give evidence at the trial.

Full and unreserved confession

The reform removes the current exclusion applicable to offences punishable by a prison sentence of more than five years. It also allows the principle of a full and unreserved confession (i.e. a complete admission of guilt) to be applied to more serious crimes. Where the court considers the confession to be free, full and unreserved, this amendment may speed up the trial. However, this is one of the most sensitive provisions of the legislation.

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The Bar Association has declared the amendment to be materially unconstitutional on the grounds that robust evidential and procedural safeguards are required for more severe potential sentences. In serious crimes, it is not permissible to replace the state's burden of proof with a simplification based on a confession.

Delay tactics, procedural incidents and appeals

The reform is underpinned by a broad concern to reduce the length of proceedings and prevent the abusive use of delay tactics. Several amendments throughout the code pursue this objective. They range from strengthening the court's case-management powers to neutralising procedural incidents that are manifestly unfounded.

- Application for the disqualification of a judge: an application for the disqualification of a judge will no longer suspend the subsequent stages of the proceedings. The court may summarily dismiss applications or requests that are manifestly unfounded.

- Protection against abusive delays: the new Article 426-B allows manifestly unfounded procedural incidents intended to prevent a judgment from becoming final and unappealable (trânsito em julgado), to be dealt with separately, without preventing the main proceedings from continuing. This includes the return of the case to the lower court or the transfer of the case file.

- Fine for delay tactics: the new Article 521-A allows the judge to impose a fine on the defendant, the assistente (a private party to criminal proceedings with independent procedural rights), the civil claimant or the affected person for manifestly unfounded acts intended to obstruct or delay the progress of the proceedings. The fine can be between 2 and 100 units of account (UCs), currently corresponding to between EUR 204 and EUR 10,200. More specifically, the wording has been revised to clarify that the fine is not imposed directly on the lawyer, but rather on the defendant, the assistente, the civil claimant or the affected person. However, if a second sanction is imposed in the same proceedings for actions carried out through a lawyer, a certificate will be sent to the Bar Association to assess possible disciplinary liability. This aspect of the reform was most strongly criticised by the Portuguese Bar Association. The Association argued that the provision places undue pressure on legal representation and is based on vague concepts, such as a 'manifestly unfounded act'. The Association also considered that the provision may have a negative impact on both the lawyer's professional independence and the right to defence.

The reform also amends the rules governing appeals. It stipulates that any procedural nullities affecting court orders must first be raised with the court that issued the decision. It restricts responses to opinions issued by the Public Prosecution Service in appeal proceedings to cases where new arguments or issues are raised. Furthermore, it enables the court registry to certify, of its own motion, when a judgment has become final and is no longer subject to appeal.

Abridged proceedings (processo abreviado)

Abridged proceedings will no longer be limited to offences punishable by a fine or imprisonment of up to five years, as defined by the applicable penalty. Instead, eligibility will depend on the existence of clear and simple evidence indicating that an offence has been committed and identifying the offender.

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This amendment was presented in response to high-profile cases characterised by lengthy proceedings in which the successive replacement of defence counsel was perceived as a significant source of delay.

In practice, this means that this form of procedure may now be used in relation to more serious offences, provided the evidence is sufficiently straightforward. The selection criterion therefore shifts from the abstract seriousness of the offence to the strength and clarity of the evidence.

The practical consequence is that cases can be tried under a simpler, faster special procedure, bypassing the judicial review stage (instrução) that would normally be available in ordinary proceedings. Abridged proceedings will also benefit from priority scheduling of trial hearings, without prejudice to the priority afforded to urgent proceedings.

Limitation periods

The reform introduces a significant amendment to the Criminal Code regarding the limitation period applicable to criminal proceedings. A new ground for suspension has been introduced, whereby the limitation period will be suspended during any period in which the judicial review hearing (debate instrutório), the trial hearing, or any other procedural act requiring the presence of defence counsel is interrupted or postponed due to the replacement of the defendant's lawyer.

This measure aims to prevent the time taken to replace defence counsel and prepare the defence from being counted towards the limitation period for criminal proceedings.

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Court costs

Finally, the reform amends Table III of the Court Costs Regulation. It increases the maximum court fees payable in connection with certain criminal procedural acts, particularly appeals to higher courts. In practice, this change means that the cost of criminal litigation will vary depending on the extent of the procedural activity in a given case.

When will the reform take effect?

The final approved text provides for the reform to take effect on 1 September 2026, subject to the completion of the legislative process, including promulgation and publication in the Diário da República (the Portuguese Official Gazette).

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What should businesses do now?

Regardless of how this reform is ultimately assessed, it is clear that criminal proceedings will become more demanding at an earlier stage. This will leave less room for late procedural responses and place greater emphasis on organising the defence, the evidence and the overall procedural strategy early.

Experience shows that those who define their strategy early on often shape the direction of the case itself in criminal proceedings. This is particularly so when analysing the indictment, raising procedural nullities, selecting evidence and preparing applications in complex proceedings.

This new framework also reinforces the importance of criminal compliance. It requires companies to adopt a more robust, structured and proactive approach to identifying, preventing and managing criminal risks. In cases involving economic and financial crime, corruption, tax fraud, money laundering or corporate criminal liability, coordinating criminal defence, document management, internal investigations and compliance functions will be even more important. ■