# Ecological judicial governance: the role of the Constitutional Courts of Brazil and Portugal in environmental protection

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Abstract: *Amministrazione giudiziale ecologica: il ruolo delle corti costituzionali di Brasile e Portogallo nella protezione ambientale* - As the Constitutional Courts expand their roles in adjudicating controversial cases, this research aims to study the constitutional jurisdiction in Brazil and Portugal, concerning the actions taken by their Constitutional Courts on the matter of environmental protection cases. The role of Constitutional Courts is different over the years and specially over the countries, depending on each reality and legal culture. Brazil and Portugal share certain cultural, historical, social and, consequently, legal affinities. Among the similarities, environmental protection is one of them, as it is expressly present in the texts of both current Constitutions. Thus, it is intended to study the constitutional protection of the environment in both countries; the theory of "Ecological Judicial Governance"; how the judicial review works in both countries; then, to analyze decisions of the Constitutional Courts in environmental protection to verify the possible existence of an "Ecological Judicial Governance" in those countries, selected because of the strong relation between them, as the Brazilian Court – and constitutional system in general – was influenced by the Portuguese. Methods studies on bibliography, constitutional text, and jurisprudence.

Keywords: Environmental protection; Ecological judicial governance; Brazil; Latin America; Portugal.



## 1. Environmental protection in the Constitutions of Brazil and Portugal

The Constitutions of Brazil and Portugal have a significant role in the historical and normative development of environmental law. Although located on different continents, the two countries have taken seriously the same concern: to constitutionalize environmental protection regulating the actions of the State and society, especially with the development of environmental law in the 1970s.

The Constitution of the Federative Republic of Brazil (CFRB) was promulgated in 1988. The Constitution of the Portuguese Republic (CRP) was promulgated in 1976. Both Brazil and Portugal had several Constitutions throughout its history, both, however, constitutionalized their environmental concerns only in their current Constitutions.

It is noteworthy that prior to the current Constitutions, both countries underwent dictatorial regimes. And it was during the final period of the

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dictatorship that democratic dialogue became possible in the drafting of a democratic Constitution[1]. It began to look at environmental issues more closely, which is why it valued more norms and principles converging with the maintenance of a healthy and ecologically balanced environment.

According to Amirante, the Brazilian constitutional order related to environmental protection corresponds to the *adolescent phase* of environmental constitutionalism globally, comprising an *Environmental Constitution* and, within its categorization of *markers*, identifies as a strong environmental constitutionalism. In relation to Portugal, within the historical trajectory of environmental constitutionalism, it is in the *nascent phase*, also identifies an *Environmental Constitution*, and possesses the *markers* corresponding to a strong environmental constitutionalism[2].

Article 66 is the main part of the Portuguese Constitution (CRP/76) that refers to the environment, included in the chapter on social rights and duties, and guarantees everyone the right to a humane, healthy and ecologically balanced living environment, as well as the duty to defend it[3]. The right to the environment in Portugal is qualified as a fundamental right. It is important to note that the Constitution centers the duty to defend the environment on the State and society, showing that the interests are not personal or individual, but are social[4].

In the context of the time, the anthropological dimension of environmental law was particularly emphasized by those who insisted on human dignity as the indeclinable root of anthropocentric environmental morality[5]. However, the Portuguese constitutional text opened a gateway to more ecological centric conceptions, related to the defense of the quality of natural environmental components (air, water, light, living soil and subsoil, flora, and fauna)[6].



In Brazil, environmental law results from the intrinsic relationship between the environment and social demands for its protection with the establishment of ecological values, especially since the 1960s. Social

[1] See: A. Ciammariconi, *Prospettive del costituzionalismo lusofono: dalle radici comuni al processo di integrazione degli ordinamenti di lingua portoghese*, Bologna, 2018; A. Ciammariconi, *L'evoluzione costituzionale portoghese tra continuità e rottura*, in L. Pegoraro (cur.), *I trent'anni della Costituzione portoghese: originalità, ricezioni, circolazione del modello*, Bologna, 2006, 51-82; M.A.C. Camargo, *A influência estrangeira na construção da jurisdição constitucional brasileira*, in *Rev. gen. der. públ. comp.*, 3, 2008; M.A.C. Camargo, *A influência da Constituição da República Portuguesa de 1976 sobre a Constituição da República Federativa do Brasil de 1988*, in L. Pegoraro (cur.), *I trent'anni della Costituzione portoghese*, cit., 180-184.

[2] D. Amirante, *Costituzionalismo ambientale: atlante giuridico per l'Antropocene*, Mulino, 2022, 90, 100, 149, 202.

[3] Available at https://www.constituteproject.org/constitution/Portugal_2005?lang=en.

[4] J.R.M. Leite, F.F. Dinnebier (org.), *Estado de Direito Ecológico: conceito, conteúdo e novas dimensões para a proteção da natureza*, São Paulo, 2017.

[5] D. Amirante, *L'ambiente preso sul serio. Il percorso accidentato del costituzionalismo ambientale*, Bologna, 2019.

[6] J.J. Gomes Canotilho, *Direito Constitucional Ambiental Português e da União Europeia*, in J.J. Gomes Canotilho, J.R.M. Leite, *Direito Constitucional Ambiental Brasileiro*, São Paulo, 2015, 14-15; J.J. Gomes Canotilho, V. Moreira, *Constituição da República Portuguesa Anotada*, Coimbra, 2007.

mobilization for environmental protection began in the early 1970s, and the Brazilian environmental movement has always been an important factor in legislative changes[7]. The 1987 National Constituent Assembly, restoring the democratic process, counted on intense popular participation[8]. The population came out in favor of the environment, social movements and indigenous groups articulated themselves to exert political pressure on the Constituent Assembly to defend the constitutionalizing of the environment.

Environmental protection has been elevated to constitutional status, consolidated in the 1988 Constitution, with article 225 being reserved for environmental protection. It establishes an intricate web of rights and obligations, both to State and individuals, amalgamating a complex and broad reach consisting of individual and collective rights and obligations, of programmatic norms the recognition of its «duty to defend and preserve the environment for present and future generations»[9], founding and intergenerational understanding, and launching the basis for the interpretation of it as a fundamental right, and, as such, a structural clause of the constitutional *ethos*[10]. This provided the constitutional basis to re-signify the axiological narrative of Brazilian environmental norms[11].

Considering the Portuguese and the Brazilian constitutional experience, the objective dimension of the fundamental right to the environment implies that environmental principles and values are assumed as fundamental legal goods, projecting themselves into the day-to-day application of the law[12].

## 2. The theory of Ecological Judicial Governance



Ecological Judicial Governance (EJG) is a theory that debates the role of the Judiciary in environmental protection. This protection has Ecological Law as its starting point, as an overcoming of the Environmental Law paradigm. Therefore, studying EJG necessarily involves the theory of the ecologization of Environmental Law, that is, the overcoming of Environmental Law by Ecological Law[13]. The theory contributes to the materialization of the ecologization process of Environmental Law through the insertion of ecological premises in jurisprudence, promoting a system of ecological decisions based on a new phase of environmental protection. It is the protagonism attributed to the Judiciary in the promotion and guarantee of

[7] I.W. Sarlet, T. Fensterseifer, *O Direito Constitucional-Ambiental brasileiro e a governança judicial ecológica: estudo à luz da jurisprudência do Superior Tribunal de Justiça e do Supremo Tribunal Federal*, in *Const., ec. des.: rev. ac. br. dir. const.*, 20, 2019, 47.
[8] P. Bonavides, P. Andrade, *História Constitucional do Brasil*, Brasília, 2002.
[9] Available at https://www.constituteproject.org/constitution/Brazil_2017?lang=en.
[10] A.H. Benjamin, *Direito Constitucional Ambiental Brasileiro*, in J.J. Gomes Canotilho, J.R.M. Leite (Eds), *Direito Constitucional Ambiental Brasileiro*, São Paulo, 2011, 119.
[11] H.S. Ferreira, Y.S.M. Mendonça, *The ecologization of Environmental Law and its reflections on the Brazilian Judicial Power: trends in Ecological Judicial Governance*, in *Rev. br. dir. an.*, 1, 2022, 6-7.
[12] V.P. da Silva *apud* I.W. Sarlet, T. Fensterseifer, *ivi*, 53.
[13] J.R.M. Leite, P.G. Silveira, *A Ecologização do Estado de Direito: uma Ruptura ao Direito Ambiental e ao Antropocentrismo Vigentes*, in J.R.M. Leite (Ed.), *A Ecologização do Direito Ambiental Vigente: Rupturas Necessárias*, Rio de Janeiro, 2018, 114.

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an effectively ecological legal system, and which is related to the "ecologization" paradigm mainly in face of the possibility of establishing adjustments, values, and updates in the understanding, grounds, and scope of decisions involving the environment[14].

«What is wrong with environmental law?»[15]. As Garver describes:

> «Environmental law has yielded many important improvements in environmental quality since its modern inception in the 1960s and 1970s. Yet, it remains reductionist and fragmented, in that it is still largely focused on the individual sources of pollution without adequate measures to address aggregate impacts. [...]
>
> As well, environmental law relies too much on flawed methods to monetize environmental harms and compare those monetized costs against other monetized measures of social welfare, all from a perspective that is too anthropocentric. The tendency to incorporate the language of money into the law is rooted ultimately in the conception of humans as apart from nature, and as rational actors free to accommodate and own elements of nature in the quest to maximize personal wealth and well-being (Nadeau 2006). Finally, environmental law overly expresses confidence that technological solutions will eventually emerge to solve whatever environmental challenges, such as climate change, humanity will confront»[16].



Now, «how do we move from environmental to ecological law?» The author suggests that a «transition from environmental to ecological law is a long-term project. It implicates a radical transformation in humanity's common understanding of the human-Earth relationship and of realistic pathways toward making that relationship mutually enhancing»[17].

According to the author, the creation of the Ecological Law and Governance Association (ELGA) in 2016, based on the Oslo Manifesto (2016), was an important step toward the transition from environmental to Ecological Law[18]. The Oslo Manifesto states:

> «To overcome the flaws of environmental law, mere reform is not enough. We do not need more laws, but different laws from which no area of the legal system is exempted. The

[14] H.S. Ferreira, Y.S.M. Mendonça, op. cit., 11-12; 3; B.M. da Cruz, *Importância da Constitucionalização do Direito ao Ambiente*, in P. Bonavides, G. Moraes, R. Rosas (Eds) *Estudos de Direito Constitucional. Em homenagem a Cesar Asfor Rocha. Teoria da Constituição, Direitos Fundamentais e Jurisdição*, Rio de Janeiro, 2009; J.H.F Pes, *Breve comparação da proteção jurídica ambiental de Brasil e Portugal*, in *Teoría jur. contemp.*, 2, 2017, 145-173.

[15] G. Garver, *Moving from environmental law to ecological law. Frameworks, priorities and strategies*, in L. Westra, K. Bosselmann, J. Gray, K. Gwiazdon (Eds), *Ecological Integrity, Law and Governance*, London, 2018, 141.

[16] *Ivi*, 142.

[17] *Ivi*, 146-147.

[18] *Ibid.*

> ecological approach to law is based on ecocentrism, holism, and intra-/intergenerational and interspecies justice. From this perspective, or worldview, the law will recognise ecological interdependencies and no longer favour humans over nature and individual rights over collective responsibilities. Essentially, ecological law internalizes the natural living conditions of human existence and makes them the basis of all law, including constitutions, human rights, property rights, corporate rights and state sovereignty».[19]

In this path, environmental jurisprudence has changed over the recent 20 or so years. This change of thinking makes ecological integrity so relevant that international and domestic law has begun to adopt the integrity of Earth's ecological system as an overarching objective of law and a duty for States[20].

Bosselmann defends that the alternative is not a law without States, but «a law informed by ecological realities. Earth's ecological systems are not there to serve humans needs, they are simply there. It is this recognition of reality that is currently missing in our international and national laws». So, unless law recognizes and internalizes ecological realities, it is doomed to fail: «no amount of rhetoric ('green economy', 'sustainable development', 'sustainable development goals') can gloss over the simple truth that humans are utterly dependent on the integrity of Earth's ecological systems and need to govern themselves accordingly»[21].

Therefore, Ecological Judicial Governance is related to the process of ecologization of current Environmental Law. This role is attributed to the Judiciary in promoting and guaranteeing an ecological legal system, done mainly through establishing adjustments, values and updates in the hermeneutics, reasoning and scope of decisions that involve the environment. After all, within the scope of the constitutional powers of the Judiciary, there is, in the form of a normative-constitutional imposition, the duty to safeguard nature[22].



## 3. Judicial Review in Brazil and Portugal – A Methodology Outline

Some key aspects should be observed more accurately. The form of appointment and composition of the Courts, the types of instruments that the Courts use to promote judicial review, and the effects of the decisions[23].

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[19] "Oslo Manifesto" for Ecological Law and Governance, *From Environmental Law to Ecological Law: A Call for Re-Framing Law and Governance*, Adopted at the IUCN WCEL Ethics Specialist Group Workshop, IUCN Academy of Environmental Law Colloquium, University of Oslo, 21 June 2016, Available at http://files.harmonywithnatureun.org/uploads/upload691.pdf.

[20] K. Bosselmann, *The ever-increasing importance of ecological integrity in international and national law*, in L. Westra, K. Bosselmann, J. Gray, K. Gwiazdon (Eds), *Ecological Integrity, Law and Governance*, London, 2018, 226.

[21] K. Bosselmann, *The ever-increasing importance*, cit., 227.

[22] I.W. Sarlet, T. Fensterseifer, *O Direito Constitucional-Ambiental*, cit., 64.

[23] D.M. Moraes, G.G. Vieira, *A Jurisdição Constitucional do Supremo Tribunal Federal em perspectiva comparada com o Tribunal Constitucional Português*, in C.B. Morais, F. Pansieri

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Brazil has an intricate federation system, with thousands of entities with legislative capabilities, elevating the degree of complexity of its judicial review[24].

The Federal Supreme Court of Brazil ("Supremo Tribunal Federal" – STF) is composed of 11 Justices, appointed solely by the President and confirmed by the Senate, among Brazilians of notable knowledge in law, at least 35 and at most 70 years old with an unblemished reputation, as commanded by article 101 of the Constitution[25]. There is no mandate period delimited, however retirement is compulsory at the age of 75.

STF's constitutional role is exercised in a variety of ways. Its function is defined by article 102 as, primarily, the protection of the Constitution. For the purpose of this work, only the instruments correlated with environmental affairs shall be presented. Those are the ADI (Direct Action of Unconstitutionality), ADC (Declaratory Action of Constitutionality), ADO (Direct Action of Unconstitutionality by Omission), ADPF (Allegation of Non-Compliance with a Fundamental Norm) and the RE (Extraordinary Appeal)[26].

To provide a clearer understanding of how these instruments function within the legal framework, an illustrative chart is essential. This chart should categorize each judicial instrument by its name, the legal category it belongs to, its primary objectives, and the entities or individuals authorized to initiate such actions or appeals. By doing so, it elucidates the procedural avenues available for the protection of environmental rights and ensures that stakeholders are better equipped to navigate the legal landscape. This structured overview not only highlights the complexity and robustness of Brazil's judicial system in addressing environmental issues but also underscores the critical role of the STF:



(Eds), *Avanços da Jurisdição Constitucional: diálogos Brasil-Portugal*, Lisboa, 2022, 305-306.

[24] A. Ciammariconi, *La giustizia costituzionale negli ordinamenti di Argentina e Brasile*, in S. Bagni, S. Baldin (cur.), *Latinoamérica: Viaggio nel costituzionalismo comparato dalla Patagonia al Río Grande*, Torino, 2021, 174.

[25] Available at https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.

[26] For reasons of space, it is not possible to go into this subject in depth in this article, so the following bibliography is recommended for a global view of Brazilian judicial review: J.A. Silva, *Curso de Direito Constitucional Positivo*, São Paulo, 2016; J.J. Gomes Canotilho, G.F. Mendes, I.W. Sarlet, L.L. Streck (Eds), *Comentários à Constituição do Brasil, São Paulo*, 2013; L.R. Barroso, *O controle de constitucionalidade no direito brasileiro*, São Paulo, 2012; G.F. Mendes, P.G.G. Branco, *Curso de direito constitucional*, São Paulo, 2012; G.F. Mendes, *I.G.S. Martins, Controle Concentrado de Constitucionalidade*, São Paulo, 2009; G.F. Mendes, *Jurisdição Constitucional*, São Paulo, 2005.

| Instrument | Category | Objective | Legitimacy |
|---|---|---|---|
| Direct Action of Unconstitutionality (ADI) | Lawsuit | Declare the unconstitutionality of a federal or state law. | General Legitimacy:<br>a) President of the Republic;<br>b) Board of the Federal Senate;<br>c) Board of the Deputies Assembly;<br>d) Prosecutor General;<br>e) Federal Council of the Order of Attorneys;<br>f) any political party represented in the National Congress.<br><br>Pertinence Legitimacy:<br>a) The Board of the Local Assembly of the Federal District;<br>b) The State or Federal District Governor;<br>c) Syndical confederation and/or class entities of national magnitude. |
| Declaratory Action of Constitutionality (ADC) | Lawsuit | Affirm the constitutionality of a federal law. | See above. |
| Direct Action of Unconstitutionality by Omission (ADO) | Lawsuit | Affirm an illegal omission of the Executive/Legislative on the regulation of a determined matter. | See above. |
| Allegation of Non-Compliance with a Fundamental Norm (ADPF) | Lawsuit | Adjudicate, prevent and repair damages done to a fundamental norm, by any act of any Federal Member. | See above. |

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|---|---|---|---|
| Extraordinary Appeal | Appeal | Syndicate a Lower Court decision that a) is contrary to the Constitution;<br>b) declared the un-constitutionality of federal law or treaty;<br>c) give precedence to a local law or local government act contested over the Constitution;<br>d) give precedence to a contested local law over federal law. | a) By claimant/ defendant. |

Brazil constitutes a federation with over 5.568 municipalities, 1 federal district, 26 States, and the Federal Union, all of which are legitimate actors to legislate and act on environmental matters, elevating the degree of complexity of the normative framework and, as such, of the possibilities of exercise of judicial review[27].

As it may be inferred from the two types of categories above, Brazil utilizes a dual judicial review tradition. The adjudication may emerge through an appeal (extraordinary appeal), which in turns often utilizes general civil procedure elements, emerging to solve case law, typical of the common law tradition[28]. It can also use the instruments usually connected to the continental tradition, promoting the evaluation of norms and acts and their compatibility with the constitution by means of a direct constitutional action (ADI, ADC, ADO, ADPF)[29].



STF's decisions may be divided regarding their category. Abstract control is defined by the binding effect of the decision, and the *erga omnes* effect[30]. Decisions by means of extraordinary appeal, even when resulting in the declaration of unconstitutionality of a certain norm, would cause impact only on the case adjudicated (*inter partes* effect), and not on an institutional level (would not be binding) unless declared so by the Federal Senate. This has been ostensibly revised through a process of constitutional mutation, an «abstractivization of the diffuse judicial review» as defined by Justice Mendes, the chief architect of said change, existing now, by pretorian interpretation, an almost mute difference between the traditions, in relation to the effects of the decisions[31].

As for the Portuguese Constitutional Tribunal ("Tribunal Constitucional de Portugal" – TCP), the Court is composed of 13 judges, 10

[27] A. Ciammariconi, *La giustizia costituzionale negli ordinamenti di Argentina e Brasile*, in S. Bagni, S. Baldin (cur.), *Latinoamérica*, cit., 174.
[28] L.R. Barroso, *Curso de Direito Constitucional Contemporâneo*, São Paulo, 2018, 226.
[29] *Ibid.*
[30] J.A. da Silva, op. cit., 55.
[31] See Rcl. 4335-5/AC, opinion of Justice G.F. Mendes, Available at https://jurisprudencia.stf.jus.br/pages/search/sjur281416/falsehttps://jurisprudencia.stf.jus.br/pages/search/sjur281416/false.

of whom are chosen by the Republican Assembly, 3 of whom are chosen by the aforementioned 10. The judges are selected from different backgrounds: 6/10 chosen by the Assembly must already be judges in any other Tribunals. The rest of them can be chosen among the other members of the legal community[32].

The judicial review may be exercised by way of direct action, or by way of appeal. Through the same methodologic approach, the following instruments were evaluated: PIC (Preventive Inspection of Constitutionality), ICL (Inspection of Constitutionality and Legality), AUO (Action of Unconstitutionality by Omission), CA (Constitutional Appeal)[33]:

| **Instrument** | **Category** | **Objective** | **Legitimacy** |
|---|---|---|---|
| Preventive Inspection of Constitutionality | Lawsuit | Evaluate the constitutionality of international treaty and/or decree to be promulgated as law and/or legal-decree that has now yet been fully incorporated as national law. | a) President of the Republic, regarding any international treaty submitted for ratification and/or decree to be promulgated as law and/or legal-decree and/or and organic law;<br>b) Representatives of the Republic, regarding any regional bill subjected for signature;<br>c) the Prime Minister or 1/5 of the Representatives of the Republican Assembly regarding any bill awai- |



[32] A.A.V. Cura, *Organização Judiciária Portuguesa*, Coimbra, 2018, 28-29; J.M.C. Costa, *A Jurisdição Constitucional em Portugal*, Coimbra, 2007, 42-43; J. Miranda, *O sistema judiciário português*, in *Rev. info. leg.* 148, 2000, 84-86.

[33] For reasons of space, it is not possible to go into this subject in depth in this article, so the following bibliography is recommended for a global view of Portuguese judicial review: J. Miranda, *Manual de Direito Constitucional*, Tomo V, Coimbra, 2011; C.B. Morais, *Justiça Constitucional*, Tomo I, 2006; J.J. Gomes Canotilho, *Direito Constitucional e Teoria da Constituição*, Coimbra, 2003; R. Medeiros, *A decisão de Inconstitucionalidade*, Lisboa, 1999. In Italian doctrine: R. Orrù, *Il Portogallo*, in P. Carrozza, A. Di Giovine, G.F. Ferrari. (cur.), *Diritto costituzionale comparato*, Tomo I, Roma-Bari, 2014; R. Orrù, A. Ciammariconi, *Composizione, indipendenza, legittimazione del* Tribunal Constitucional *portoghese:* «mudam-se os tempos, mudam-se as vontades», in M. Calamo Specchia (cur.), *Le Corti Costituzionali. Composizione, Indipendenza, Legittimazione*, Torino, 2011, 250 ss.; R. Orrù (cur.), J.J. Gomes Canotilho, *Il diritto costituzionale portoghese*, Torino, 2006; R. Orrù, *La giustizia costituzionale in azione e il paradigma comparato: l'esperienza portoghese*, in *Rev. fac. dr. Un. Lisboa*, v. XLVII, 1/2, 2006; G. Vagli, *L'evoluzione del sistema di giustizia costituzionale in Portogallo*, Pisa, 2001.

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| | | | ting promulgation as organic law. |
| Inspection of Constitutionality and Legality | Lawsuit | Declare the:<br>a) unconstitutionality of any law;<br>b) the illegality of any norm under a legislative act on the grounds of violation of reinforced-value law;<br>c) the illegality of any local norm that violates local statute of an autonomous region;<br>d) the illegality of a national law that violates the statute of a local autonomous region. | General Legitimacy:<br>a) President of the Republic;<br>b) President of the Republican Assembly;<br>c) Prime Minister;<br>d) Provedor de Justiça (General Ombudsman);<br>e) Prosecutor General;<br>f) 1/10 of the Representatives of the Republican Assembly.<br><br>Pertinence Legitimacy:<br>a) Representatives of the Republic;<br>b) Legislative Assembly of the Autonomous Regions;<br>c) Presidents of the Legislative Assembly of the Autonomous Regions;<br>d) Presidents of Regional Governments;<br>e) 1/10 of the Representatives of the Legislative Assembly. |
| Action of Unconstitutionality by Omission | Lawsuit | Affirm an illegal omission on the duty to legislate on matters that, when unregulated, prevent the execution of a constitutional norm. | a) President of the Republic;<br>b) Provedor de Justiça (General Ombudsman). |

| | | | |
|---|---|---|---|
| Appeal | Appeal | Syndicate a Lower Court decision that:<br>a) refuse to apply a law on the pretext of its unconstitutionality;<br>b) applied a law which unconstitutionality was alleged during trial;<br>c) refuse application of a norm that integrates and legislative act, claiming its illegality for violating a reinforced-value law;<br>d) refuse the application of a regional law by claiming that it violates the statute of the local autonomous region;<br>e) refuse application of a national law by claiming it violates the statute of a local autonomous region;<br>f) that applied a norm which illegality has already been inferred by the Supreme Court. | a) By claimant/ defendant;<br>b) compulsorily by the General Prosecutor in some cases (When a Lower Court decision that (a) refuse to apply a law on the pretext of its unconstitutionality; (b) refuse application of a norm that integrates and legislative act, claiming its illegality for violating a reinforced-value law; (c) that applied a norm which illegality has already been inferred by the Supreme Court). |



Portugal also utilizes the abstract and incidental forms of judicial review. The abstract control is defined by the binding *erga omnes* effects. The judicial review promoted through by means of appeal, however, even when resulting in the declaration of unconstitutionality of a certain norm, would cause impact only the case adjudicated (*inter partes* effect), and not the specific norm in an institutional matter (in other words, would not be binding)[34]. The effects typical of the abstract control can be applied, however, if the

[34] J.J. Gomes Canotilho, *Direito Constitucional e Teoria da Constituição*, Coimbra, 2003, 899.

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Court has declared the unconstitutionality or illegality of a certain norm in at least three occasions, in what has been called a generalization process[35].

One instrument in Brazil, due to its apparent uniqueness, must be highlighted: the Allegation of Non-Compliance with a Fundamental Norm (ADPF). Different from usual methods of abstract control, what characterizes the ADPF is that it is not necessarily an abstract action for the purpose of declaring the unconstitutionality of a norm and can also be used to avoid or repair damages to a fundamental precept against an act of any of the Federal Entities or of any public agency or entity exercising state functions[36-37].

## 4. Ecological Judicial Governance in Practice: Judicial Review in the Brazilian and Portuguese Constitutional Courts

Despite the similarities in the legal-constitutional system, including in the scope of their Constitutional Courts, it is noteworthy that the present work takes into consideration the differences in size between the countries. After all, Portugal has a territorial area of 92,212km² and a population of 10.33 million people, while Brazil has an area of 8,510,000km² and a population of 214.3 million people. Therefore, the intention is to consider not the quantity of judicial decisions – what could conclude that Brazil has more lawsuits because it has a much larger territorial area and population – but the intention is to consider judicial decisions with an impact on environmental protection to gauge the theory of Ecological Judicial Governance between the countries under study. Due to the elevated number of cases, a few more relevant ones were selected for a brief analysis. The aim is to evaluate judicial decisions regarding environmental (as categorized by the Courts) and its use or not of the EJG theory.



To analyze judicial decisions of the Court's in this work, Portuguese data were extracted from the TCP's verdicts database[38]. The descriptors "ambiente" (environment), "contraordenação ambiental" (environmental offense), "defesa do ambiente" (environmental protection), "direito ao ambiente" (right to the environment), "direito do ambiente" (environmental

[35] *Ibid.*

[36] On ADFP see G.F. Mendes, *Arguição de descumprimento de preceito fundamental: comentários à Lei n. 9.882*, de 3-12-1999, São Paulo, 2011.

[37] ADPF has proven itself as a powerful tool, being a means to attract the exercise of judicial review by the STF in a number of important cases that would otherwise be outside the Courts jurisdiction. Worthy of mention are ADPF 101 (import of used car tires) and 109 (prohibition of asbestos). Some are still ongoing, as for ADPF 175 (Environmental Code of Blumenau), ADPF 221 (regulation of agrochemicals), ADPF 234 (prohibition of asbestos), ADPF 242 (continuation of thermonuclear power plant of Angra III), ADPF 389 (suspension of regulations and proceeding to reidentification of fishermen), ADPF 623 (alters the composition of the National Council of the Environment – CONAMA), ADPF 640 (art. 25 of Law 9.605), ADPF 651 (decree 10224/2020 - regulation of Law 7797, that institutes the National Fund of the Environment), ADPF 667 (regulation of airborne agrochemicals), ADPF 708 (climate fund resources).

[38] Available at https://acordaosv22.tribunalconstitucional.pt/.

law) and "proteção do ambiente" (environmental protection) were used[39]. Brazilian data were extracted from the STF's statistical database[40]. For control purposes, results resulting from resources prior to 2006 (when the General Repercussion was introduced) were excluded, avoiding deviation of the results due to a lackluster ability to control the quality of samples. Actions/lawsuits of diffuse and concentrated control of constitutionality were gathered, and the classifications attributed by the court itself were respected. For both, actions/lawsuits not finally adjudicated on the merits that did not receive an injunction were excluded. Given said method, for research development purposes, 71 verdicts from the Portuguese TCP and 46 from the Brazilian STF were evaluated.

Throughout this study, a detailed analysis of judicial decisions with an environmental impact was conducted to better understand the application of the Ecological Judicial Governance (EJG) theory in the focus countries. To facilitate this analysis, a comprehensive table was developed, categorizing each decision based on criteria such as the ruling and case numbers, year, type of action, theme addressed, predominant control parameter, outcome, identification of unconstitutionality and if the decision was consistent or not with EJG parameters.

This table serves as an essential tool for understanding judicial patterns and the frequency with which courts consider environmental issues within the scope of EJG. Through it, it is possible to identify not only trends in judicial decisions but also to assess the effectiveness of Courts in promoting environmental protection through their constitutional review power.



For a detailed consultation of this data and an in-depth analysis of specific cases that illustrate the practical application of EJG, see *Table 1* in *Annex A* of this article. The table provides valuable insights into the dynamics between legislation, jurisprudence, and environmental protection, offering an empirical basis for future discussions on the adoption of EJG.

The general findings can be summarized in key aspects. The Brazilian STF was confronted with 43 lawsuits (93,5%) and only 3 appeals (6,5%), while the Portuguese TCP demonstrates an inverted tendency with 80,3% of appeals and only 19,7%% of lawsuits:

[39] Excluded 416/14, not adjudicated on ground of formal impossibility; 527/17, an electoral lawsuit miscategorized; 44/99 that discusses the obligatory denomination of certain types of businesses; 274/98 that evaluates the constitutionality of the criminalization of disobedience.

[40] Available at https://transparencia.stf.jus.br/extensions/corte_aberta/corte_aberta.html.

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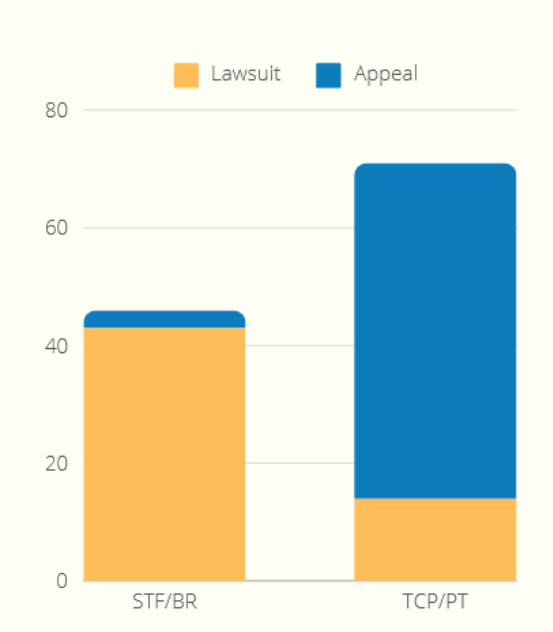
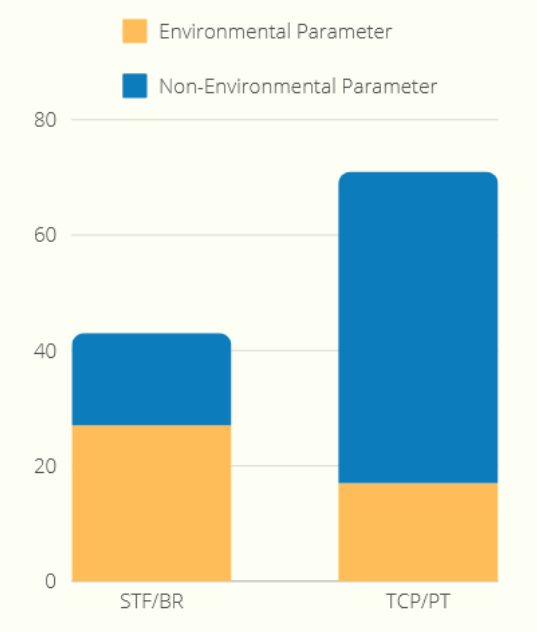
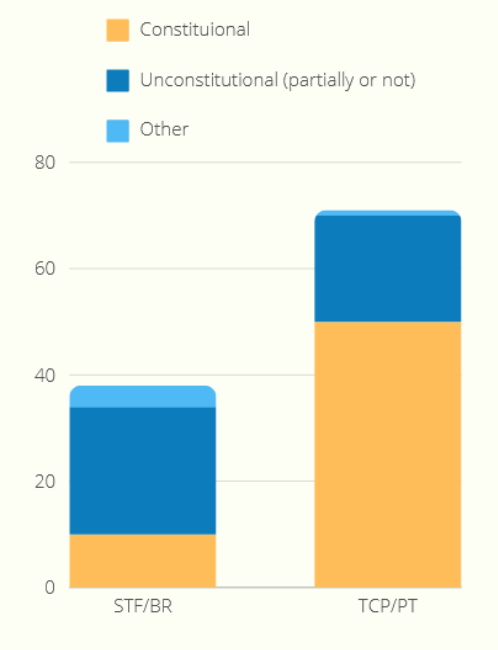



While the Brazilian STF utilized the environmental constitutional framework as a dominant parameter 27 times (58,7%), the TCP used this only 17 times (24%).

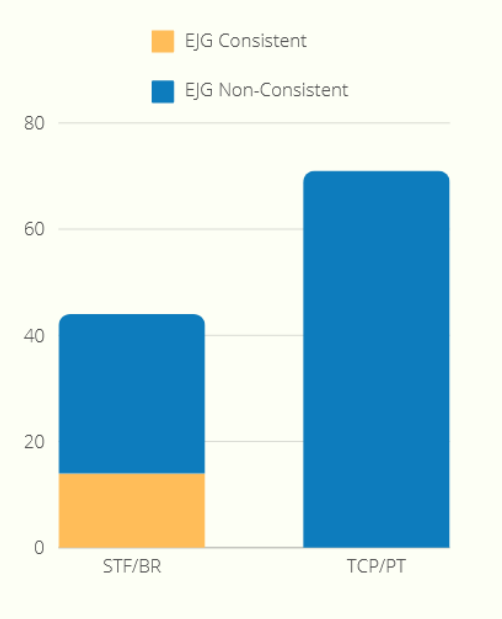





While the Brazilian STF declared a statute unconstitutional totally or partially in 32 occasions (69,6%), the TCP has shown itself more prone to maintain the statutes integrity, declaring the unconstitutionality only 20 times (28,2%):




The TCP has not shown any indication to assume a position in line with EJG, while the Brazilian STF, implicitly or explicitly has shown itself more prone to such arguments in 30,44% of the cases:






Although the table provides a global overview of the subject, from a qualitative perspective, the decisions chosen to analyze are those most commented on by the specialized legal doctrine of each country in view of the repercussions. Therefore, two Brazilian cases were selected to illustrate the state of the art in the application or non-application of EJG in Brazil, starting with an initial case of "vaquejada", which quickly initiated the possibility of applying the doctrine, then moving on to the analysis of the constitutionality of the new Brazilian environmental code, an opportunity at

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which the theory was rejected. The same occurs with the choice of the Portuguese case involving the exercise of constitutional jurisdiction to declare the unconstitutionality of a statute involving the criminalization of animal abuse, one of the rare Portuguese cases where constitutional control was effectively promoted based on constitutional provisions related to environmental protection.

In Brazil, a paradigmatic case was ADI 4983[41]. In 2016, the STF declared as unconstitutional the Law 15.299/2013 of the State of Ceará (northeastern Brazil), which dealt with the cultural practice of "*vaquejada*". This practice consists of a competition where two cowboys try to take down a bull, pulling it by the tail, in order to dominate the animal. The State of Ceará claimed in its defense that this practice has historical importance for the cultural heritage of the region, noting the collision of two fundamental rights enshrined in the Brazilian Constitution: the protection of the environment (article 225 of the CRFB/88) and the safeguarding of cultural manifestations (article 215 of the CRFB/88).

By six votes to five, the second principle prevailed, and the law was declared unconstitutional. Two of the main arguments in favor of protecting animals were that non-human animals are no longer «mere automatons», and that the situation should be interpreted from a biocentric perspective, as opposed to an anthropocentric perspective, which considers animals as "things", devoid of emotions, feelings or any rights, evidencing an understanding concerned with life (human or not) and differentiated from the traditional legal view[42]. According to Justice Marco Aurélio Mello, whose vote-rapporteur was accompanied by the majority of the Court, the mistreatment, cruelty and damages against animals were proven, not allowing the prevalence of the cultural manifestation represented by the "*vaquejada*"[43].



The case denoted a paradigm shift in the traditional understanding of the Brazilian Court, demonstrating an approximation of the new hermeneutics referring to the theory of Ecological Judicial Governance[44]. However, it should be noted that this understanding is not consolidated in the Court's jurisprudence, because not all decisions related to environmental protection present this characteristic of analysis from an ecological perspective.

As an example, a case of great repercussion: in 2019, the STF adjudicated four ADIs and one ADC on the Forest Code[45], the most

[41] Lawsuit available at https://portal.stf.jus.br/processos/detalhe.asp?incidente=4425243 and the decision available at https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=12798874.
[42] H.S. Ferreira, Y.S.M. Mendonça, op. cit., 13.
[43] I.W. Sarlet, T. Fensterseifer, *Direito Constitucional Ambiental: Constituição, Direitos Fundamentais e Proteção do Ambiente*, São Paulo, 2017, 402.
[44] This case had a backlash effect, as less than a year later the National Congress approved Amendment to the Constitution n. 96 providing that "sporting practices that use animals are not considered cruel as long as they are cultural manifestations". See S.A. Pavan, M. Kraus, C.E. Sá Neto, *Reações legislativas a decisões judiciais: o efeito backlash e o diálogo institucional frente à Emenda Constitucional n. 96*, in C.B. Morais; F. Pansieri (org.), *Avanços da Jurisdição Constitucional: diálogos Brasil-Portugal*, Lisboa, 2022.
[45] ADI 4901, 4902, 4903, 4937 and ADC 42.

important legislation on environmental regulation in Brazil. In summary, after more than a year of oral arguments and intense debates among the Justices, the Court issued a 672-page opinion[46] which decided for the constitutionality of 35 norms, most of them involving at least one divergence.

Two important arguments demonstrate how the STF's hermeneutics changed from the "*vaquejada*" case. The first concerns the prohibition of environmental setbacks, a principle that seeks to prevent measures that reduce the environmental protection already achieved, which the STF rejected stating that «environmental public policies must be reconciled with other values democratically elected by legislators, such as the labor market, social development, meeting the basic consumption needs of citizens, etc.».

The second one was the provision that permits public works in permanently protected environmental areas if it is proven to be necessary. In other words, the right to the environment can be reduced if a certain project of public interest cannot be feasibly carried out in another location (i.e., if the burden is too great). The Court's understanding of these two situations in particular surprised environmentalists precisely because it did not consider an ecological perspective of law.

In Portugal, attention was drawn to the Court's decision n. 867/2021[47]. The case involved a person convicted of the crime of mistreatment of companion animals, who appealed to the TCP to challenge the constitutionality of this crime (article 387 of the Penal Code). The Court granted the appeal, considering that such prohibitions are based on the right to property held by human beings, not on the protection of animals as such, stating that article 66 of the Constitution does not protect animals as beings of inherent dignity, that would allow them to be understood as "individuals", but protects them only to the extent of their relevance to the environment as a whole, understood holistically, concluding that «mistreating an animal, however heinous it may be, does not endanger the ecosystem [as a whole]».



A precedent was formed and was replicated in other instances as for decision n. 781/2022[48]. The Court dismissed the appeal, based on the precedent, considering that the crime of mistreatment of animals does not protect animals due to their relevance to the environment, but as individuals, and in terms of the relationship with human beings, by reference to which the relevant concept of companion animal is drawn, for their entertainment and companionship.

The protection of animals as provided for in article 387 of the Penal Code is of an individualistic nature, while the protection of the environment, as provided for in article 66 of the Constitution, is of a holistic nature. The legislative impulse towards punishing this cruelty is not part of the intention to protect the environment, but rather to protect animals as beings intrinsically worthy of consideration, and as such, would not be constitutionally recognized, characterizing a violation by the legislator

[46] Available at https://jurisprudencia.stf.jus.br/pages/search/sjur408490/false.
[47] Available at https://www.tribunalconstitucional.pt/tc/acordaos/20210867.html.html.
[48] Available at https://www.tribunalconstitucional.pt/tc/acordaos/20220781.html.

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against the duty of proportionality (prohibition of excess, Untermaßverbot[49]).

Therefore, in practice, it was possible to perceive that the TC of Portugal does not promote the theory of EJG (at least yet), after all it recognizes the rights of animals and nature in the usual hermeneutics of an anthropocentric perspective, where the human beings are considered the center of the legal system refuting a similar legal status to nature as itself (*ie.* not in relation to humans).

In Brazil, despite finding some opinions based on an ecological perspective and, therefore, with characteristics of EJG, it was noticed that such a thesis is not pacified and/or supported in cases of systemic significance. Earlier opinions, such as the "*vaquejada*" case, led to the enunciation of the thesis, but did not imply the establishment of a strong precedent.

## 5. Conclusions

Until the 1970s, constitutional references to the environment were scarce and sparse. A new phase opened with the Portuguese Constitution of 1976, influencing the Brazilian Constitution of 1988. As much as both countries went through an authoritarian period of dictatorial regime, it has been observed that the new Constitutions paved the way not only for democracy, but also for the debate on environmental law. In both countries it is possible to conclude that there is a minimum legal basis that can guarantee the legal protection of the environment. In both constitutional systems, the characterization of a fundamental right can be identified: the right to an ecologically balanced and preserved environment[50].



Regarding environmental defense within the scope of the Constitutional Courts, Brazil demonstrates, at times, to interpret the law closer to an Ecological Judicial Governance than Portugal. This does not mean, however, that the Portuguese Court does not have an environmental concern that reflects the constitutionally mandated protection of the environment. Only means that environmental protection takes place in different ways, as through public policies or through the Administrative Courts. In fact, the discipline of Environmental Law in Portugal is treated within Administrative Law[51], not as an autonomous discipline as in Brazil, which demonstrates the view of environmental law as intrinsically linked to the themes of Public Administration and the duties of the State, but not exactly as a specific category of law, which does not necessarily depend on or is fully correlated with the State.

As for the Brazilian Constitutional Court, despite having advanced in a certain way in the thesis on the "*vaquejada*" opinion, has shown strong reluctance in adopting the position entirely. This is revealed through other cases, such as actions involving the Brazilian Forest Code. This is seen as a demonstration of a certain disparity in the integrity of the Court's jurisprudence.

[49] C.W. Canaris, *Grundrechte und Privatrecht*, Berlin, 1998, 55.
[50] J.H.F. Pes, *Breve comparação*, cit., 159-160.
[51] C.A. Gomes, H. Oliveira, *Tratado de Direito do Ambiente*, Vol. 1, Lisboa, 2022.

The fact that the Brazilian Constitutional Court has more judicial decisions about environmental protection does not mean that these decisions have all an ecological perspective. But it is important to emphasize that the Brazilian Judiciary appears to have a greater mistrust regarding environmental protection by the Executive and Legislative Branches, which is why more activist decisions are observed. A large portion of these decisions are grounded in an ecological perspective, aiming to give central importance to the environment and surpass purely mercantilist aspects of the environment, as expected from an effectively Ecological Judicial Governance.

This interpretation of transcending environmental law towards ecological law is important, especially within doctrines and jurisprudence, in order to recognize the urgency of environmental protection upon which human and non-human life depend on Earth. What is really going on is that Earth is a coherent whole with life (in all its forms) being part of it. Earth is not just a backdrop for human enterprise. We can't live without it and – bar leaving this planet – we need to reconcile our needs with the needs of Earth[52].

The major challenge does not appear to be related to the Constitutions of Portugal or Brazil, but to the application of the constitutional text by the Courts in an ecological approach, genuinely concerned with the future of humanity and the survival of living beings on Earth. Law is an important social science to drive paradigm shifts. It must not be forgotten that law is not only a mechanism for resolving conflicts, but also a powerful instrument for inducing social change that we want to see in the world[53].



So, despite similarities in both constitutional systems, the characterization of a fundamental right to an ecologically balanced and preserved environment, and the similarities in judicial review, there is evidence of disparity regarding the adoption of EJG. Transforming deeply rooted legal traditions proves itself challenging[54].

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## Allegato A

[52] K. Bosselmann, *The ever-increasing importance*, cit., 227.
[53] A. Aragão, *O Estado de Direito Ecológico no Antropoceno e os Limites do Planeta*, in F.F. Dinnebier, J.R.M. Leite (orgs.), *Estado de Direito Ecológico: Conceito, Conteúdo e Novas Dimensões para a Proteção da Natureza*, São Paulo, 2017.
[54] A.H. Benjamin, *Laudato si, ecologização da justiça social e o juiz planetário*, in *Rev. est. inst.*, (7)2, 2021, 569.

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## Brazil – Supremo Tribunal Federal

| Decision /Year | Type | Dominant Control Parameter | Outcome | Declares Unconstitutionality | Explicit or Implicit Application of EGJ Assumptions |
|---|---|---|---|---|---|
| 42/2018 | Lawsuit | Art. 225 | Partially Upheld | Not Predominantly | No |
| 861/2020 | Lawsuit | Art. 225 | Partially Upheld | Predominantly | No |
| 1823/98 | Lawsuit | Art. 150, I | Mootness | Mootness | No |
| 2030/18 | Lawsuit | Art. 22 e 24 | Dismissed | No | No |
| 2142/22 | Lawsuit | Art. 24 | Upheld | Yes | No |
| 2800/11 | Lawsuit | Art. 61, §1º | Partially Upheld | Not Predominantly | No |
| 3252/05 | Lawsuit | Art. 2 | Mootness | Yes Cautelar | No |
| 3378/22 | Lawsuit | Art. 225 | Partially Upheld | Not Predominantly | No |
| 3829/19 | Lawsuit | Art. 24 | Partially Upheld | Predominantly | No |
| 4757/22 | Lawsuit | Art. 23 e 225 | Partially Upheld | Not Predominantly | No |
| 4937/18 | Lawsuit | Art. 225 | Partially Upheld | Not Predominantly | No |
| 4988/18 | Lawsuit | Art. 24 e 225 | Upheld | Yes | No |
| 5016/18 | Lawsuit | Art. 21 e 225 | Upheld | Yes | No |
| 5675/22 | Lawsuit | Art. 24 | Upheld | Yes | No |
| 5995/21 | Lawsuit | Art. 22 e 24 | Upheld | Yes | Yes |
| 5996/20 | Lawsuit | Art. 225 | Upheld | Yes | Yes |
| 6148/22 | Lawsuit | Art. 225 | Declaration of Norm Still Constitutional | Still Constitutional | No |
| 6218/23 | Lawsuit | Art. 24 | Dismissed | No | No |
| 6288/20 | Lawsuit | Art. 225 | Partially Upheld | Predominantly | No |
| 6957/23 | Lawsuit | Art. 225 | Dismissed | No | No |
| 59/2022 | Lawsuit | Art. 225 | Partially Upheld | Yes | Yes |

| | | | | | |
|---|---|---|---|---|---|
| 101/2012 | Lawsuit | Art. 225 | Partially Upheld | Predominantly | Yes |
| 389/2020 | Lawsuit | Art. 225 | Dismissed | No | No |
| 651/2022 | Lawsuit | Art. 225 | Upheld | Yes | Yes |
| 708/2023 | Lawsuit | Art. 225 | Partially Upheld | Yes | No |
| 747/2022 | Lawsuit | Art. 225 | Partially Upheld | Predominantly | Yes |
| 749/2022 | Lawsuit | Art. 225 | Partially Upheld | Predominantly | Yes |
| 6137/23 | Lawsuit | Art. 24 | Dismissed | No | Yes |
| 1856/11 | Lawsuit | Art. 225 | Upheld | Yes | Yes |
| 3776/07 | Lawsuit | Art. 225 | Upheld | Yes | Yes |
| 4717/19 | Lawsuit | Art. 225 | Upheld | Yes | No |
| 4901/18 | Lawsuit | Art. 225 | Partially Upheld | Not Predominantly | No |
| 4902/18 | Lawsuit | Art. 225 | Partially Upheld | Not Predominantly | No |
| 4903/18 | Lawsuit | Art. 225 | Partially Upheld | Not Predominantly | No |
| 5012/18 | Lawsuit | Arts. 1º, CAPUT, 2º, 5º, LIV, 62 E 84, XXV | Dismissed | No | No |
| 5312/19 | Lawsuit | Art. 24 e 255 | Upheld | Yes | Yes |
| 5475/20 | Lawsuit | Art. 225 | Upheld | Yes | Yes |
| 6350/20 | Lawsuit | Art. 2 | Upheld | Yes | Yes |
| 7321/21 | Lawsuit | Art. 21 e 22 | Upheld | Yes | No |
| 6492/21 | Lawsuit | Art. 1 | Dismissed | No | No |
| 6536/22 | Lawsuit | Art. 1 | Dismissed | No | No |
| 6583/21 | Lawsuit | Art. 1 | Dismissed | No | No |
| 73/1989 | Lawsuit | Art. 225 | Mootness | Yes | Yes |
| 1056/19 | Appeal | Art. 225 | Dismissed | No | Yes |
| 999/2020 | Appeal | Art. 225 | Upheld | Yes | Yes |
| 233/2009 | Appeal | Art. 5º, II, V, X, XIII, XXXIV, XXXV, LIV, LV, LXXIX; 98, I; 170, XIII, IV, V; e 173, §4º | Mootness | Yes | No |

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## Portugal – Tribunal Constitucional

| Decision /Year | Type | Dominant Control Parameter | Outcome | Declares Unconsti-tutionality | Explicit or Implicit Applica-tion of EGJ Assump-tions |
|---|---|---|---|---|---|
| 418/23 | Appeal | Art. 110.º TFUE | Upheld | No | No |
| 390/23 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 229/23 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 217/23 | Appeal | Art. 27.º and 18.º, n.º 2, | Upheld | Yes | No |
| 9/23 | Appeal | Art. 27.º and 18.º, n.º 2, | Upheld | Yes | No |
| 843/22 | Appeal | Art. 27.º and 18.º, n.º 2, | Upheld | Yes | No |
| 781/22 | Appeal | Art. 27.º and 18.º, n.º 2, | Upheld | Yes | No |
| 759/22 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 683/22 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 646/22 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 597/22 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 429/22 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 411/22 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 241/22 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 83/22 | Lawsuit | Art. 66 | Dismissed | No | No |
| 867/21 | Appeal | Art. 27.º and 18.º, n.º 2, | Upheld | Yes | No |

| | | | | | |
|---|---|---|---|---|---|
| 437/21 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 436/21 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 711/20 | Appeal | Art. 110.º TFUE | Mootness | Mootness | No |
| 220/20 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 148/20 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 80/20 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 623/19 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 567/19 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 397/19 | Appeal | Art. 66 | Dismissed | No | No |
| 395/19 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 204/19 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 133/18 | Appeal | Art. 66 and Art. 18 | Dismissed | No | No |
| 40/17 | Lawsuit | Separation of Powers | Partial Mootness and Partially Dismissed | No | No |
| 591/15 | Appeal | Art. 66 and Art. 18 | Dismissed | No | No |
| 179/15 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 515/14 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 316/14 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 315/14 | Lawsuit | Regional Autonomy | Upheld | Yes | No |
| 80/14 | Appeal | Art. 66 | Dismissed | No | No |
| 75/13 | Appeal | Art. 66 | Dismissed | No | No |

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|---|---|---|---|---|---|
| 581/12 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 387/12 | Lawsuit | Art. 66 | Upheld | Yes | No |
| 274/12 | Appeal | Art. 66 and Tax and Budgetary Framework | Dismissed | No | No |
| 286/11 | Appeal | Art. 66 | Dismissed | No | No |
| 278/11 | Appeal | Art. 66 | Dismissed | No | No |
| 119/10 | Lawsuit | Tax and Budgetary Framework | Upheld | Yes | No |
| 24/09 | Appeal | Art. 165 | Upheld | Yes | No |
| 14/09 | Appeal | Art. 65 and 66 | Dismissed | No | No |
| 496/08 | Appeal | Art. 65 and 66 | Dismissed | No | No |
| 423/08 | Lawsuit | Art. 165 | Upheld | Yes | No |
| 511/07 | Appeal | Art. 66 and Tax and Budgetary Framework | Dismissed | No | No |
| 258/06 | Lawsuit | Art. 66 and Tax and Budgetary Framework | Dismissed | No | No |
| 139/06 | Appeal | Regulatory Competence | Dismissed | No | No |
| 536/05 | Appeal | Art. 165 | Upheld | Yes | No |
| 136/05 | Appeal | Right to Information | Dismissed | No | No |
| 685/04 | Appeal | Art. 13°, arts. 64° and 66° | Upheld | Yes | No |
| 360/04 | Appeal | Art. 66 | Dismissed | No | No |
| 113/04 | Appeal | artigo 168º, nº1, *i)* | Upheld | Yes | No |
| 329/03 | Appeal | Tax and Budgetary Framework | Dismissed | No | No |
| 544/01 | Appeal | Regulatory Competence | Dismissed | No | No |
| 57/01 | Appeal | Regulatory Competence | Dismissed | No | No |
| 536/00 | Appeal | Right to associate | Dismissed | No | No |
| 95/00 | Lawsuit | Right to associate | Upheld | Yes | No |
| 94/00 | Lawsuit | Regional Autonomy | Upheld | Yes | No |
| 639/99 | Appeal | Regulatory Competence | Dismissed | No | No |

| | | | | | |
|---|---|---|---|---|---|
| 458/99 | Appeal | Jurisdiction of Courts | Dismissed | No | No |
| 194/99 | Appeal | Regulatory Competence | Dismissed | No | No |
| 636/95 | Lawsuit | Tax and Budgetary Framework | Dismissed | No | No |
| 203/95 | Appeal | Art. 168º | Upheld | Yes | No |
| 432/93 | Lawsuit | Art. 66 | Upheld | Yes | No |
| 368/92 | Lawsuit | Art. 9º, *c)* and *e)*, 65º and 66º | Upheld | Yes | No |
| 432/91 | Lawsuit | Regional Autonomy | Mootness | No | No |
| 197/91 | Appeal | Art. 168 | Upheld | Yes | No |
| 83/91 | Appeal | Art. 66 | Dismissed | No | No |
| 307/88 | Lawsuit | Free Speech | Upheld | Yes | No |

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