

President of the Republic

submits decree amending the Nationality Law to the Constitutional Court

Drawing attention to the fact that the amendment to the Nationality Law, with effects applicable to cases still in progress, could aggravate the situation of Israeli hostages in Gaza who have pending applications for Portuguese nationality, which could be considered an attack on the principles of trust and the dignity of the human person, as well as, objectively, the right to life, since a Portuguese-Israeli hostage has already been released on the basis of her Portuguese nationality, the President of the Republic submitted that Assembly of the Republic decree to a preventive review of its constitutionality by the Constitutional Court, solely and specifically because of its article 6. 9.

Your Excellency,

Under the terms of Article 278(1) of the Constitution, as well as Article 51(1) and Article 57(1) of Law 28/82 of November 15, I hereby petition the Constitutional Court, on the following grounds, to assess the conformity with the Constitution of the following rules contained in Decree 134/XV of the Assembly of the Republic, received and registered at the Presidency of the Republic on January 18, 2024, to be promulgated as law:

- the rule contained in Article 6.

- 1) Article 6 of the Decree under consideration creates a new special regime applicable to pending applications for the granting of nationality to descendants of Portuguese Sephardic Jews, introducing additional criteria for such granting.
- 2) With this new special regime, the parliamentary legislator aims to remedy, retroactively or at least retrospectively, the organic and material unconstitutionality of article 24-A of the nationality regulation, approved by Decree-Law no. 26/2022, of March 18, as invoked by the Administrative and Fiscal Court of Porto, and widely reported in the press, which introduced additional requirements for granting nationality to descendants of Portuguese Sephardic Jews.
- 3) This new regime also appears to violate the principle of the protection of trust, which is intrinsic to the principle of the Rule of Law, as enshrined in Article 2 of the Constitution, as well as, due to its retroactive effects, violating the prohibition of retroactivity of rules restricting rights, freedoms and guarantees, as set out in Article 18(3) of the Constitution.
- 4) In fact, since there are other cases before the courts which also invoke the unconstitutionality of the rule in question, it is understandable that the applicants, particularly those for whom this recognition could represent respect for the right to life, are waiting with hope and anguish, as are their families, for the outcome of these cases, confident in their arguments, and the only justification for the rule now approved is that the legislator is seeking to retroactively remedy this unconstitutionality by intervening, by legislative means, in cases underway in these courts.
- 5) In fact, in the current context, the change in question can be seen in the situation of the Israeli and other Hamas hostages in Gaza, several of whom have pending applications for Portuguese nationality, as descendants of Portuguese Sephardic Jews. As is well known, in these cases, holding a nationality other than Israeli has led to their release, as has already happened with a Portuguese-Israeli woman. The creation of additional obstacles to the granting of Portuguese nationality in these cases could even be considered an attack on the principle of the dignity of the human person, enshrined in Article 1 of the Constitution, as well as, objectively, on the right to life, enshrined in Article 24 of the Constitution, insofar as the conclusion of the ongoing processes for granting Portuguese nationality, under the law still in force, could mean, as it has already meant, the possibility of release by Hamas and survival itself. It should be remembered that an applicant for Portuguese nationality under the same law has already died in captivity.

In view of the above, under the terms of Article 278(1) of the Constitution, as well as Article 51(1) and Article 57(1) of Law 28/82 of November 15, we request a preventive review of the constitutionality of the rules contained in Article 6 of Decree 134/XV of the Assembly of the Republic, for violation of Articles 1, 2 and 18(3), 2 24 of the Portuguese Constitution.

I hereby submit to Your Excellency my requests for a preliminary ruling on the constitutionality of the rules contained in Article 6 of Decree 134/XV of the Assembly of the Republic, for violation of the provisions of Articles 1, 2 and 18, paragraph 3, 2 24, all of the Constitution of the Portuguese Republic.

I offer you my most respectful regards.

Lisbon, January 22, 2024

The President of the Republic

Marcelo Rebelo de Sousa