



THE NEW REFORM OF CRIMINAL PROCEDURE

Law No. 34/2026 of 27 July

Law No. 34/2026 was published on 27 July 2026, introducing amendments to the **Code of Criminal Procedure**, the **Criminal Code** and the **Procedural Costs Regulation**.

The Law, which entered into force on 1 September 2026, introduces significant changes to various stages and aspects of criminal proceedings, namely the preliminary judicial investigation, trial proceedings, appeals, special forms of procedure, the taking of evidence and procedural costs.

The reform is based on a legislative policy of **simplifying and rationalising procedural proceedings**, seeking to reduce the length

of proceedings, focus procedural activity on essential acts and strengthen the powers to direct and manage proceedings.

This approach forms part of the strategy established by the Criminal Policy Law for the 2026-2028 period and seeks to address one of the main challenges facing criminal justice: the length of proceedings.

However, the solutions adopted have given rise to intense debate within the legal community, as, despite their potential to increase the efficiency of the judicial system, they raise questions as to their impact on the constitutional guarantees afforded to the defence and on the balance of criminal proceedings.

In this context, particular importance attaches to the application for **abstract successive constitutional review** submitted by the Portuguese Bar Association.

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The following sections examine the main amendments introduced by Law No. 34/2026, the objectives pursued by the legislator and the main legal and constitutional issues raised by the reform.

THE NEW REGIME GOVERNING DILATORY ACTS

One of the main innovations introduced by Law No. 34/2026 is the creation of mechanisms aimed at preventing the abusive use of criminal proceedings, through new Articles 85-A and 521-A of the Code of Criminal Procedure.

Article 85-A expressly establishes a **duty of procedural management and appropriateness**, requiring the judicial officer responsible for the proceedings to actively manage the case and adopt measures to simplify and expedite its conduct.

Although such a duty already existed in civil proceedings, its express introduction into criminal proceedings is particularly significant given the specific nature of this jurisdiction and the safeguards afforded to the defence.

Article 521-A, in turn, establishes a specific regime for sanctioning dilatory acts,

allowing the court to impose a fine of between **2 and 100 procedural units (UC)** on the defendant, civil party, claimant or affected person whenever they engage in acts that are manifestly unfounded and intended, or liable, to delay the proceedings.

According to the explanatory memorandum to the bill, these amendments seek to strengthen the powers of judicial case management and discourage the filing of manifestly unfounded applications, procedural incidents or appeals.

Nevertheless, the solutions adopted have been criticised by various members of the judiciary and legal profession, particularly with regard to the lack of precision surrounding the concepts of “manifestly unfounded act” and “dilatory act”, the deterrent effect arising from the possibility of fines of up to 100 UC (€10,200), and the potential impact of strengthened case-management powers on equality of arms.

THE PRE-TRIAL PHASE

Law No. 34/2026 introduces a number of amendments to the preparatory phase of criminal proceedings, reflecting the same legislative policy of rationalising proceedings, focusing on essential procedural acts, strengthening the judge’s case-management powers and promoting greater procedural efficiency.

Against this background, the reform **reconfigures the preliminary judicial investigation**, reaffirming its exceptional nature and refocusing it on the judicial review of the decision to prosecute or close the investigation.

To this end, Articles 287, 297 and 299 of the Code of Criminal Procedure have been amended, requiring a more concise statement of grounds in an application for the opening of a preliminary judicial investigation, restricting investigative measures to those strictly necessary and concentrating the taking of evidence at trial.

The reform also **simplifies the regime governing procedural pleadings**, requiring greater objectivity in the defence submission, a more rigorous organisation of evidence and, in cases of exceptional complexity, the identification of the evidence considered essential for each segment of the indictment.

At the same time, Article 120 of the Code of Criminal Procedure has been amended, **concentrating the raising of procedural nullities within specific procedural timeframes**, meaning that such issues must be raised at designated stages of the proceedings, thereby preventing them from being raised only at more advanced stages.

Furthermore, the amendment to Article 312 **strengthens the judge's powers in preparing the trial**, allowing the judge to review evidentiary applications in advance

and reject those that are manifestly irrelevant, superfluous, impossible or dilatory, thereby determining in advance the evidence to be heard at trial.

According to the legislator, these amendments seek to focus procedural activity on essential stages, eliminate unnecessary acts and reduce the length of proceedings. Conversely, various sectors of the legal community have expressed reservations as to the potential impact of these measures on the effectiveness of judicial review, the scope of the right to be heard and the safeguards afforded to the defence.

THE GREATER IMPORTANCE GIVEN TO PRE-EXISTING EVIDENCE

Another area in which the reform introduces significant changes concerns the taking and use of evidence, particularly with regard to **full and unconditional confessions** and the use at trial of statements previously made.

With regard to Article 344, the reform removes the limitation whereby a confession could only dispense with the taking of evidence in respect of offences punishable by a term of imprisonment of no more than five years. This effect may now arise irrespective of the applicable statutory penalty, provided that the court

considers the confession credible and the relevant statutory requirements are met.

At the same time, Articles 356 and 357 of the Code of Criminal Procedure have been amended, broadening the circumstances in which statements previously made by the defendant and witnesses may be read or reproduced at trial, with a view to avoiding the repetition of evidentiary measures and making greater use of evidence lawfully obtained at earlier stages of the proceedings.

According to the legislative approach adopted, these amendments seek to rationalise the taking of evidence and make its use more efficient.

However, various sectors of the legal community have expressed reservations regarding the potential weakening of the principles of **immediacy, orality and the right to challenge evidence**.

THE EXTENSION OF THE SCOPE OF SUMMARY PROCEEDINGS

One of the amendments with potentially greater impact on the conduct of criminal proceedings concerns **summary proceedings**, through the amendment of Article 391-A of the Code of Criminal Procedure.

Prior to the reform, this form of procedure could only be used where there was simple

and compelling evidence and the offence was punishable by a term of imprisonment of up to five years or, where the statutory penalty was higher, where the Public Prosecution Service considered in the indictment that a sentence exceeding that limit should not, in practice, be imposed.

With the repeal of Article 391-A(2), any limitation linked to the applicable penalty has been removed. Summary proceedings may therefore be used whenever there is simple and compelling evidence that an offence has been committed, irrespective of the applicable statutory penalty, while the statutory criteria for assessing the simplicity of the evidence remain unchanged.

From the legislator's perspective, this amendment will enable a swifter criminal justice response.

Critics, however, have highlighted the risk that offences carrying particularly severe penalties may now be tried under a simplified procedural framework, originally conceived for cases involving a lower degree of complexity.

AMENDMENTS TO THE REGIME GOVERNING PROCEDURAL COSTS

Law No. 34/2026 also increases the court fees set out in **Table III of the Procedural Costs Regulation**, particularly in the context of ordinary criminal proceedings

and appeals to the Courts of Appeal and the Supreme Court of Justice.

Although these amendments apply generally, various sectors of the legal community have warned that the increase in costs associated with exercising procedural remedies may discourage the exercise of defence and appeal rights, particularly in more complex proceedings.

CONCLUSION

Law No. 34/2026 represents one of the most significant reforms of Portuguese criminal procedure in recent decades, reflecting a clear legislative policy aimed at simplifying procedures, accelerating proceedings and increasing the efficiency of criminal justice.

However, this approach has given rise to intense debate within the legal community. While the reform seeks to address the problem of lengthy proceedings, it also raises serious concerns regarding the

potential weakening of the safeguards afforded to the defence, the right to challenge evidence and other fundamental principles underpinning criminal proceedings, such as equality of arms, the presumption of innocence and effective judicial protection.

More than merely introducing isolated amendments, Law No. 34/2026 **redefines the balance between the efficiency of criminal justice and the protection of the defendant's fundamental rights.**

The effective impact of the reform will therefore depend on the interpretation ultimately adopted by the courts and on the constitutional review of the solutions introduced, determining whether the objectives of greater efficiency can be achieved without compromising the safeguards enshrined in **Article 32 of the Portuguese Constitution.**

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