



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Portugal
<b>Title:</b>	Exceptional Legislation during State of Emergency (COVID-19 Pandemic)
<b>Date:</b>	3 June 2020
<b>Expert:</b>	Dulce Lopes/Joana Nunes Vicente
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Restriction on the exercise of rights
<b>Grounds of discrimination:</b>	Age
<b>Field of application:</b>	Employment
<b>Source:</b>	National legislation
<b>Applicable law:</b>	-

### **Content**

**Law development:** Under the scope of the COVID-19 Pandemic, the Portuguese Government has approved Decree 2-A/2020, of 20 March, that executed the declaration of emergency (Decree of the President of the Republic 14-A/2020, of 18 March); followed by Decrees 2-B/2020, of 2 April, and 2-C/2020, of 17 April, that regulated the prorogation of the emergency state.

**Key points of analysis:** According to Article 4( 1) (a) of Decree 2-A/2020, persons aged 70 or more were subject to a special duty of protection, regardless of having previous medical conditions that place them in a special vulnerable situation (as defined in (1) (b)). These persons were subject to special restrictions in terms of circulation (Article 4 (2)). Particularly they were explicitly prevented from exercising any professional activity (which was not the case for persons under 70, even if they had a previous medical condition, as long as they were not under medical leave, Article 4 (3)). These restrictions did not apply to health professionals and other workers from health and social care institutions, civil protection agents, security forces and services, military and civilian personnel of the Armed Forces, inspectors of the Food and Economic Security Authority, holders of political office, magistrates and leaders of the social partners.

Governmental Decrees 2-B/2020, of 2 April, and 2-C/2020, of 17 April, regulated the prorogation of the emergency state issued by the President of the Republic, and extended the temporal application of the above-mentioned normative solutions.

More recently, the declaration of calamity, resulting from the Resolution of the Council of Ministers 33-A/2020, of 30 April, applicable since 3 May, did not include similar provisions regarding persons aged 70 or more.

The three Decrees (2-A to 2-C/2020) were highly debated in the academic arena (mostly within webinars that took place on the COVID-19 Pandemic) given the fact that persons aged 70 or more, without any serious pre-existing medical condition, and, therefore, on the basis of their age only, were subject to special restrictions, in particular in exercising

economic activities. This was seen by many as an unjustified form of direct discrimination, based solely on age. Since 3 May, however, those restrictions are no longer in force and no other discrimination allegations have been made regarding the exceptional legislation passed.

**Internet link source:** Decree 2-A/2020, <https://dre.pt/home/-/dre/130473161/details/maximized>.

Decree 2-B/2020, <https://dre.pt/home/-/dre/131068124/details/maximized>.

Decree 3-C/2020, <https://dre.pt/home/-/dre/131908499/details/maximized>.

Decree-Law 20/2020,

<https://dre.pt/web/quest/home/-/dre/132883356/details/maximized>.

Rectification Statement 18-C/2020),

<https://dre.pt/home/-/dre/133064189/details/maximized>.