Revista Jurídica Unicuritiba
Submetido em: 01/09/2026
Aprovado em: 17/10/2026
Avaliação: Double Blind Review e
ISSN: 2316-753X

ADMINISTRATIVE LITIGATION OVER RESIDENCE PERMITS (RA) IN PORTUGAL

O CONTENCIOSO ADMINISTRATIVO DAS AUTORIZAÇÕES DE RESIDÊNCIA (AR) EM PORTUGAL

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ABSTRACT
This article examines how administrative failure in migration governance shapes patterns of legal mobilization and judicial intervention in Portugal. In the context of increasing immigration, administrative authorities have repeatedly failed to comply with legal deadlines for residence authorizations, generating prolonged uncertainty for migrants and pressure on institutional decision-making. The injunction provided for in Article 109 of the CPTA has increasingly been mobilized by migrants and legal professionals to compel administrative action and transform formal rights into effective entitlements. Drawing on statistical data, legislative developments, administrative reports, and case law, the article analyses how legal reforms expanding access to residence permits generated administrative backlog and institutional strain. It argues that growing reliance on urgent litigation reflects a structural imbalance between formal rights recognition and administrative capacity, raising governance concerns related to judicial workload and unequal access to remedies.

Keywords: Legal Mobilization, Migration Governance, Administrative Failure, Judicial Remedies, Fundamental Rights, Administrative Litigation, Portugal.

RESUMO
Este artigo analisa de que forma as falhas administrativas na governação das migrações influenciam os padrões de mobilização jurídica e de intervenção judicial em Portugal. Num contexto de crescente imigração, as autoridades administrativas têm reiteradamente incumprido os prazos legais para a decisão dos pedidos de autorização de residência, gerando situações prolongadas de incerteza para os migrantes e pressionando os mecanismos institucionais de tomada de decisão. A

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intimação para a prática de ato devido, prevista no artigo 109.º do Código de Processo nos Tribunais Administrativos (CPTA), tem sido cada vez mais mobilizada por migrantes e profissionais do direito como instrumento para compelir a Administração a atuar e transformar direitos formalmente reconhecidos em posições jurídicas efetivamente garantidas. Com base em dados estatísticos, desenvolvimentos legislativos, relatórios administrativos e jurisprudência, o artigo examina de que modo as reformas legais que ampliaram o acesso às autorizações de residência contribuíram para a acumulação de pendências administrativas e para a sobrecarga institucional. Sustenta-se que o recurso crescente à litigância urgente reflete um desequilíbrio estrutural entre o reconhecimento formal de direitos e a capacidade administrativa para lhes dar execução, suscitando preocupações de governação relacionadas com a carga de trabalho dos tribunais e com as desigualdades no acesso aos mecanismos de tutela jurisdicional.

Palavras-chave: Mobilização Jurídica; Governação das Migrações; Falha Administrativa; Meios de Tutela Jurisdicional; Direitos Fundamentais; Contencioso Administrativo; Portugal.

1 INTRODUCTION

The article examines how administrative failure in migration governance reshapes patterns of legal mobilization and judicial intervention in Portugal. In recent years, the significant increase in immigration flows to Portugal has intensified the pressure on the administrative structures responsible for residence authorization procedures. As delays in decision-making have become more structural rather than exceptional, migrants increasingly resort to judicial mechanisms to secure the effective implementation of formally recognized rights. This shift highlights the growing role of administrative litigation not merely as a legal remedy, but as a socio-legal mechanism through which individuals navigate bureaucratic constraints and enforcing rights in practice.

Rather than merely asking whether the injunction for the protection of rights, freedoms, and guarantees constitutes an adequate legal mechanism to respond to administrative inaction, this article advances a broader argument. (Rodrigues & Cabete, 2022). It contends that administrative failure in migration governance transforms exceptional judicial remedies into systemic mechanisms of legal mobilization, effectively reshaping the relationship between fundamental rights and the administrative state.

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ISSN: **2316-753X**

For a better understanding of the scope of this study, it is important to contextualize the migratory dynamics in Portugal, particularly considering the significant transformations observed in recent years. (Rodrigues, 2022). Portugal has undergone a profound shift from a country of emigration to a country of immigration, with a rapid and sustained increase in the number of foreign residents. This transformation has not only demographic implications but also institutional consequences, as the growing demand for residence authorization procedures places sustained pressure on administrative capacity and bureaucratic performance.

Following this contextualization, the study will address the main changes to the commonly referred to as the “Law on Foreigners”, Law no. 23/2007, of July 4, and examines their impact on migration governance and administrative litigation. These legislative developments have, in several cases, expanded access to residence permits, while simultaneously increasing the volume of applications submitted to administrative authorities. From a governance perspective, this expansion illustrates how legal reforms designed to facilitate access to residence may generate unintended institutional consequences when administrative capacity does not evolve at the same pace.

To answer the central research question, the study focuses on the characterization of the procedure provided for in Article 109 of the Code of Procedure in Administrative Courts (CPTA) - the injunction for the protection of fundamental rights - in order to frame this urgent mechanism and understand the situations in which it is most used. Particular attention is given not only to its formal structure, but also to its role as a socio-legal instrument through which migrants and legal representatives react to administrative inertia and seek to secure the timely protection of rights.

Furthermore, the study seeks to determine whether this urgent procedure constitutes an adequate response to situations of administrative delay, especially when fundamental rights are at stake. In this regard, it will reflect on the extent to which the absence of a decision on residence permit applications affects the effective enjoyment of rights such as access to employment, healthcare, and social protection. These effects highlight how administrative delay operates not merely as a procedural deficiency, but as a factor shaping migrants’ everyday access to rights and legal certainty.

Against this background, the increase in immigration in recent years has placed significant pressure on the Portuguese administrative system, particularly in the

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processing of residence permit applications. The Administration has frequently failed to comply with legally established deadlines, leading to considerable backlogs and prolonged waiting periods for applicants. The persistent failure of the Administration to comply with these deadlines cannot be understood merely as a question of inefficiency or procedural delay. Rather, it reflects a broader pattern of structural administrative incapacity that disproportionately affects migrants, placing them in prolonged situations of legal uncertainty. This condition of uncertainty has tangible consequences, limiting effective access to fundamental rights such as healthcare, employment, and social protection, and contributing to the production of vulnerability within migration governance systems.

Finally, the article presents concluding reflections aimed at anticipating the broader implications of the increasing use of this type of judicial mechanism, both for the courts and for migration governance more generally. In particular, it considers whether the growing reliance on urgent judicial procedures reflects a structural imbalance between the formal recognition of rights and the institutional capacity required to implement them effectively.

2 CONTEXTUALIZATION OF IMMIGRATION IN PORTUGAL

As a starting point for the present study, it is important to contextualize the migratory dynamics in Portugal, particularly in light of the significant transformations observed in recent years. Over the past two decades, Portugal has progressively transitioned from a country historically associated with emigration to one experiencing sustained immigration growth. This demographic evolution has contributed to the expansion of administrative responsibilities, particularly in relation to the processing of residence authorization procedures.

This section draws on data from national statistics sources and migration authorities, particularly the former Foreigners and Borders Service (SEF) the Agency for Integration, Migration and Asylum (AIMA), in order to capture both demographic trends and their administrative implications.

According to recent data from AIMA, by the end of 2024 there were approximately 1,543,697 foreign citizens residing in Portugal, corresponding to around 14–15% of the total population. This represents a sharp increase compared to 2017, when the number of foreign residents stood at approximately 421,802, meaning that the foreign

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population has almost quadrupled within a seven-year period, as illustrated in Figure 1.

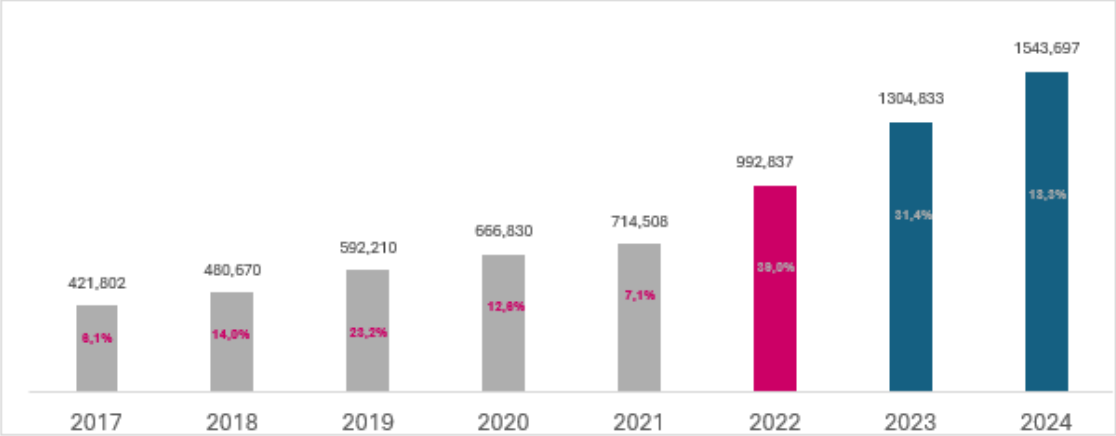


Figure 1 – Evolutionary Trend of Foreign Residents (AIMA, 2024, p. 4)

This rapid growth is further confirmed by international data. The OECD estimates that the foreign-born population reached around 1.2 million people in 2023, corresponding to the 11.7 percent of the population, placing Portugal among the European countries with the most significant recent increases in immigration. From a social-legal perspective, such demographic expansion functions as a structural driver of administrative demand, increasing the likelihood of procedural delays and institutional strain. (Rodrigues, Bhattacharya & Cabete, 2024). Rather than representing a temporary demographic fluctuation, this trend reflects a long-term transformation in the scale and complexity of migration governance in Portugal.

According to SEF, there has also been sustained growth in the number of foreign citizens from European Union countries, confirming the continued relevance of Portugal's perceived attractiveness as a safe destination and of favorable fiscal frameworks such as the non-habitual resident regime (SEF, 2023, p. 9).

More recent data from AIMA confirm that this trend has intensified, contributing to a significant increase in residence permit applications. However, this sustained growth has not been matched by a proportional reinforcement of administrative capacity, thereby placing increasing pressure on administrative structures and contributing to procedural delays. This mismatch between administrative demand and institutional response represents a structural challenge for migration governance, as delays become increasingly systemic rather than exceptional.

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In terms of nationalities, the Brazilian community continues to represent the largest group of foreign residents, followed by other nationalities such as those from European Union countries, India and Portuguese-speaking African countries. This diversity reflects both historical ties and more recent labour and mobility dynamics, as can be seen in Figure 2.

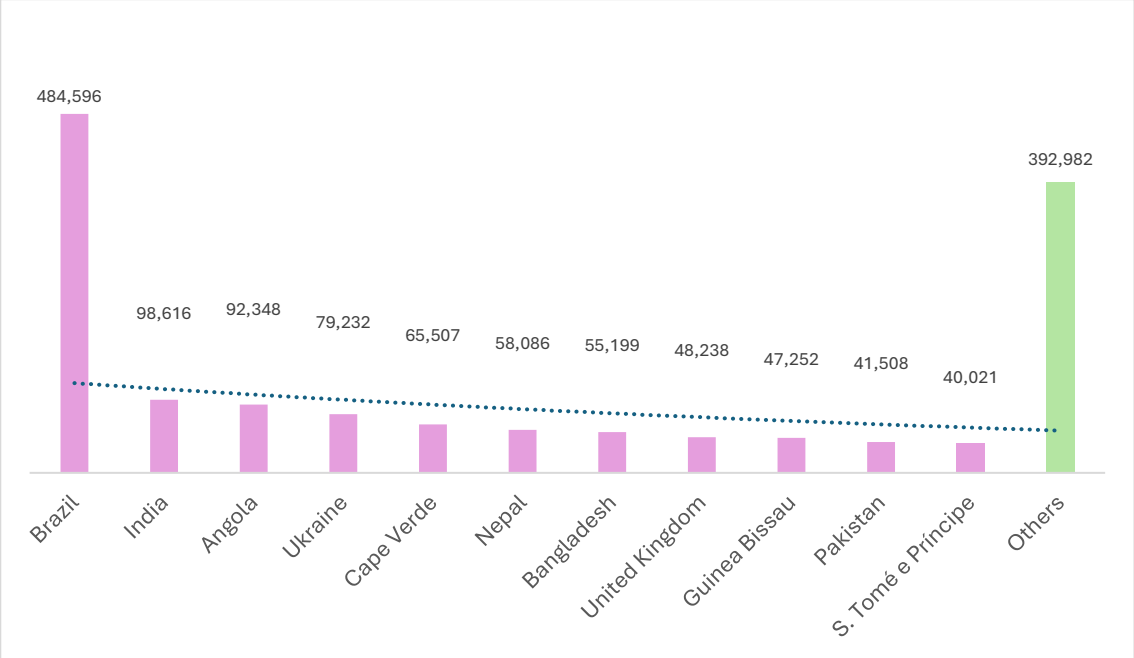


Figure 2 – Most Representative Nationalities (AIMA, 2024, p. 4)

In practical terms, such diversity contributes to the complexity of administrative management, requiring authorities to process multiple legal pathways and procedural categories across heterogeneous migrant profiles.

Another point of particular relevance concerns the demographic structure of the foreign population, which is predominantly composed of individuals of working age. This characteristic is frequently highlighted in public discourse as evidence of immigration's contribution to labour market functioning and to the sustainability of social protection systems. However, it also implies a higher demand for timely administrative responses, particularly in relation to residence permits linked to employment.

This demographic reality is frequently used to justify the economic and social relevance of immigration (Ramos, 2012; Quintino, 2018). Nevertheless, the intensity and speed of recent inflows have exposed structural limitations in the capacity of

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administrative institutions to respond effectively to increasing demand. From a socio-legal perspective, this situation illustrates how demographic expansion interacts with institutional capacity, transforming migration growth into a driver of administrative pressure and procedural delay.

According to SEF, a total of 143,081 new residence permits were granted in 2022, with the most relevant reasons being employment (51,525) and family reunification (27,054) (SEF, 2023, p. 14; Vazão, 2024). Among employment-related permits, the most significant category corresponds to the exercise of subordinated professional activity, often associated with mechanisms that facilitated access to regularization.

However, these figures must be interpreted in light of the legal framework governing access to residence permits. As illustrated in Figure 3, provisions such as Article 88(2) of Law no. 23/2007, together with residence certificates for European Union citizens, account for a substantial proportion of residence permits granted. These mechanisms have played a central role in expanding access to legal residence, while simultaneously contributing to a significant increase in the number of applications submitted to administrative authorities.

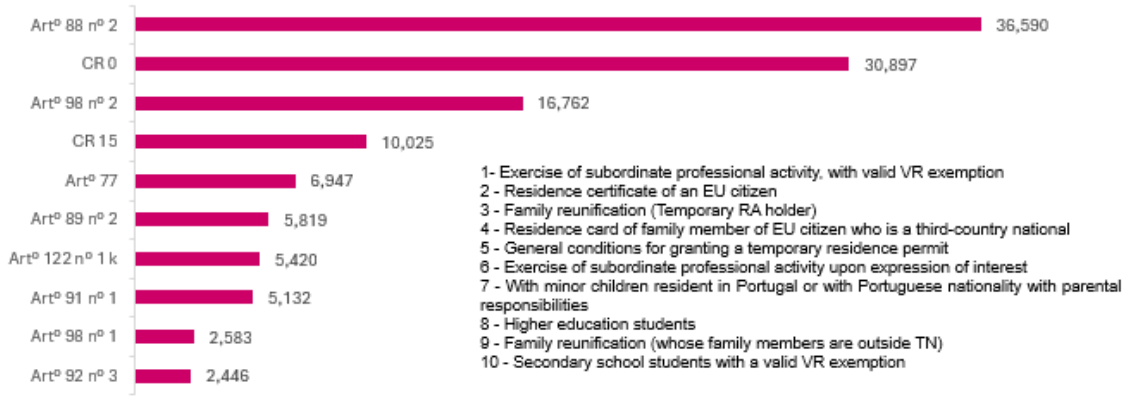


Figure 3 - Reasons for granting a residence permit (SEF 2023, p. 17)

It is also important to highlight additional residence pathways, such as the special regime for investment activity (ARI – commonly referred to as the “Golden Visa”), which, despite its popular designation, constitutes a residence permit rather than a visa and is granted to third-country nationals who undertake qualifying investment activities, such as capital investment or job creation. By the end of 2022, a total of 1,193 residence permits had been granted under this scheme (SEF, 2023, p. 17). Although quantitatively less significant, such mechanisms illustrate the diversification of migration channels and their differentiated impact on administrative procedures.

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In this context, the increase in residence permit applications should not be understood merely as a statistical trend, but as a development with direct institutional consequences. The expansion of legal migration pathways, combined with Portugal's growing attractiveness, has generated a volume of applications that exceeds the processing capacity of administrative authorities.

Empirically, this imbalance between administrative demand and institutional response creates a structural gap between formally recognized rights and their effective implementation. Administrative delay therefore emerges not merely as bureaucratic inefficiency, but as a factor that contributes to the emergence of litigation and legal mobilization, as individuals increasingly resort to judicial mechanisms to compel administrative action.

More broadly, these developments indicate that migration governance cannot be understood solely through legislative frameworks or statistical data but must also account for the institutional capacity required to operationalize rights in practice. Demographic pressure interacts with legal frameworks and administrative resources, creating conditions in which procedural delays become predictable rather than exceptional.

Thus, the statistical evolution of immigration in Portugal should not be interpreted merely as contextual background, but as a central explanatory factor in the growing relevance of disputes concerning residence permits and the increasing use of urgent judicial procedures aimed at ensuring the protection of fundamental rights. In this sense, immigration statistics function not only as descriptive indicators, but also as explanatory variables for understanding the emergence of legal mobilization in migration governance.

3 MAIN AMENDMENTS TO THE LAW ON FOREIGNERS AND THEIR IMPACT ON THE ADMINISTRATION

To understand the current dynamics of administrative litigation concerning residence permits, it is necessary to examine the principal amendments introduced to the legal framework governing immigration in Portugal, particularly Law no. 23/2007, of July 4 commonly referred to as the Law on Foreigners.

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The original 2007 reform itself responded to a combination of structural, political, and supranational drivers. As noted by Alexandrino (2008, p.76), three main factors justified the legislative overhaul: first, deficiencies in the previous legal framework, including organizational shortcomings, regulatory inconsistencies, and mechanisms that indirectly encouraged irregularity; second, political imperatives linked to national migration management; and third, the need to transpose and consolidate European legal instruments. In particular, the earlier system was criticized for its fragmentation and inefficiency, including the proliferation of residence permit categories and the limited effectiveness of measures addressing irregular migration (Alexandrino, 2008, p.76).

More broadly, the 2007 law must be understood as part of a wider paradigm shift associated with European integration. Portugal's accession to the European Economic Community in 1986 and to the Schengen Area in 1991 fundamentally reconfigured the legal and institutional context of migration governance. This transformation involved the removal of internal border controls, the establishment of a common visa regime, and the gradual development of a shared European policy on asylum, immigration, and external border management, alongside the consolidation of European citizenship (Alexandrino, 2008, pp. 72–74), as established under Article 9 of the Treaty on European Union and Article 20 of the Treaty on the Functioning of the European Union.

From a contemporary perspective, this evolution reflects the growing interdependence between national migration regimes and European-level governance frameworks. While Member States formally retain competence over key aspects of migration policy, their regulatory autonomy is increasingly shaped by supranational coordination mechanisms, policy convergence pressures, and common strategic priorities (Geddes and Scholten, 2016; European Commission, 2024).

In the context of multi-level governance, the evolution of Law no. 23/2007 reflects the growing interdependence between national migration regimes and European Union governance frameworks. While Portugal formally retains competence over key aspects of its migration policy, its regulatory autonomy is increasingly shaped by supranational coordination mechanisms, policy convergence pressures, and common strategic priorities. This scenario illustrates what Martins & Rodrigues (2024) characterizes as a "sovereignty in confrontation", configuring a constitutional "tug-of-war" within the European Union. In this process, national legislative choices are not merely reactions to internal dynamics, but responses to external normative and institutional constraints.

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Thus, the Portuguese legal system functions as a hybrid regulatory model, where domestic policy options permanently intersect with European legal obligations and international commitments, demonstrating that migration governance is inseparable from the EU's multi-level governance structure.

Since its adoption, the law has been amended repeatedly - reaching sixteen versions to date, with the most recent modification introduced by Decree-Law no. 37-A/2024, of June 3. Although many of these amendments have had limited structural impact, others have introduced significant changes to the functioning of migration policy, particularly in relation to access to residence permits and administrative procedures. It is precisely these more consequential amendments that warrant closer examination, as they reveal not only shifts in legislative orientation but also their implications for administrative capacity and migration governance more broadly.

3.1 AMENDMENTS TO ARTICLES 88 AND 89 OF LAW NO. 23/2007, OF JULY 4

Articles 88 (Residence Permit for the Exercise of Subordinate Professional Activity) and 89 (Residence Permit for the Exercise of Independent Professional Activity) which regulate residence permits for subordinate and independent professional activity, have been part of the legal framework since its original version. However, their practical significance has evolved considerably over time, particularly as a result of successive amendments that have progressively expanded access to residence permits through labour market participation.

Rather than creating entirely new legal categories, these amendments operated through the gradual flexibilization of existing requirements, making these pathways increasingly central within the Portuguese migration regime. This evolution is reflected in the growing number of residence permits granted under these provisions, particularly in the context of subordinate employment, as noted in the previous section.

The initial formulation of Article 88 established a relatively restrictive model, requiring, in addition to general conditions, the existence of a valid employment contract and compliance with formal entry requirements. Although an exception mechanism was already provided for - allowing, under specific conditions, the waiver of certain requirements - this remained limited in scope and dependent on administrative discretion (Alexandrino, 2008, p. 86).

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A first relevant amendment occurred with Law no. 59/2017, which removed the obligation to communicate residence permits granted under Article 88 to the Employment and Vocational Training Institute (IEFP) for quota management purposes. While formally technical, this change contributed to the gradual erosion of the quota-based logic that had previously structured labour migration policy, signaling a shift towards a more flexible and demand-driven model.

A more substantive transformation was introduced by Law no. 28/2019, which significantly broadened access to residence permits by creating a presumption of legal entry based on prior registration with the social security system. In practical terms, this reform enabled third-country nationals to regularize their status through employment, even in the absence of a prior residence visa.

From an analytical perspective, this mechanism can be understood as a form of post-entry regularization, whereby legal status is granted ex post on the basis of labour market integration (Ambrosini, 2021). Such approaches are not unique to Portugal but reflect broader trends in Southern European migration regimes, where legal frameworks adapt to the realities of labour demand and migrant trajectories. From an institutional perspective, this reform significantly increased the number of individuals eligible to apply for residence permits, thereby intensifying administrative demand and contributing to the expansion of pending applications.

Within this context, the so-called “Expression of Interest” (Declaração de Interesse) became a central procedural instrument, allowing individuals to initiate residence permit applications without holding a prior visa, provided that cumulative conditions were met. This represented a significant departure from traditional migration control models based on ex ante admission. However, by lowering procedural barriers to application submission, this mechanism effectively transferred institutional pressure from border control to administrative processing structures.

From a broader theoretical standpoint, this flexibilization aligns with arguments that migration systems are shaped by the interaction between labour market dynamics, migrant agency, and institutional practices (de Haas, 2021). In this sense, the Portuguese model can be seen as privileging functional labour market integration as a pathway to legal status.

Subsequent amendments reinforced this trend. Law no. 18/2022 introduced provisions related to the job-seeker visa, facilitating the transition from temporary entry to residence based on employment. Similarly, earlier changes to Article 89 expanded

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access to residence permits for entrepreneurial activity, including the development of innovative business projects.

Liberal states increasingly face structural pressure to reconcile migration control with fundamental rights and constitutional commitments, particularly in contexts marked by the expansion of legal migration pathways and growing institutional constraints (Bast & Orgad, 2019). Within this framework, legislative reforms in migration law often reflect attempts to balance labour market demand, legal guarantees, and regulatory control. The Portuguese case illustrates this broader tension, as the progressive flexibilization of Articles 88 and 89 expanded access to residence permits while simultaneously increasing pressure on administrative structures responsible for their implementation.

Taken together, these legal transformations reshaped not only eligibility criteria but also the volume and tempo of administrative procedures, creating the structural conditions examined in the following section.

3.2 POTENTIAL CONSEQUENCES OF AMENDMENTS TO ARTICLES 88 AND 89 ON ADMINISTRATION

The structural imbalance generated by the progressive flexibilization of Articles 88 and 89 becomes particularly visible when examining its impact on administrative performance. While it is difficult to precisely quantify the exact causal relationship between legislative amendments and administrative delays, the growing centrality of these legal pathways for residence authorization clearly coincided with a significant increase in administrative demand. In practical terms, this shift illustrates how regulatory expansion can generate institutional strain when not accompanied by proportional administrative adaptation, transforming legal reforms into drivers of bureaucratic congestion.

This development raises critical questions regarding the causal relationship between legislative expansion and administrative performance. From an early stage, institutional actors warned of a potential “pull effect” associated with the flexibilization of access to residence permits, particularly following the introduction of the presumption of legal entry based on social security contributions. These concerns were reflected in administrative reports and public statements (SEF, 2023).

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In this context, Luísa Maia Gonçalves, former National Director of SEF, highlighted the risks associated with these reforms, including increased migratory pressure and insufficient administrative resources to process applications:

> "The Foreigners and Borders Service (SEF), which had warned of the security risks that this extraordinary regularization could cause and its effect of calling immigrants to national territory, was surprised by the approval of the law. According to a note issued by the national directorate to all district leaders last Friday, until the Ministry of Internal Affairs (MAI) clarifies the scope of the new rules, some of which contradict other articles of the previous legislation that have not been changed, the so-called SAPA, the online booking service where immigrants register their 'expressions of interest', is suspended. SEF also points out, in this internal information, the lack of sufficient human resources and IT resources to respond to the expected increase in applications for residence authorizations" (Diário de Notícias, 2017, 7 August).

However, while such concerns feature prominently in institutional discourse, they should be interpreted with caution. As recent research suggests, migration flows are shaped by a combination of structural, economic, and social factors, rather than being driven solely by legal incentives (de Haas, 2021; Ambrosini, 2021).

A more robust indication of the impact of these legislative changes can be found in administrative performance data. According to the Ombudsman's report (2023), processing times for Expressions of Interest (DIs) increased dramatically between 2020 and 2022, rising from approximately eight months to over two years for initial validation alone.

These delays were explicitly acknowledged by SEF, which attributed them to insufficient human and technological resources, particularly in managing the volume of applications submitted through the SAPA system (Provedor de Justiça, 2023, p. 5). This suggests that migration governance failures are often rooted not in the legal framework itself but in the institutional capacity required to implement it. From an administrative standpoint, the Portuguese case illustrates a classic implementation gap, in which the expansion of rights is not accompanied by proportional administrative resources (Boswell, 2019).

Statistical data further reinforces this interpretation, as shown in Table 1. While the number of Expressions of Interest increased exponentially—reaching over 230,000 submissions in 2022—the number of processed applications remained comparatively low. The divergence between submissions and validations illustrates how procedural

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expansion without institutional reinforcement generates cumulative administrative backlog.

YEAR	ARTICLE 88	ARTICLE 89	TOTAL
DIs created and not canceled			
2020	65.251	14.179	79.430
2021	56.204	7.827	64.031
2022	194.847	36.250	231.097
DIs submitted and not canceled			
2020	64.727	13.404	78.131
2021	53.713	7.543	61.256
2022	184.837	33.676	218.513
Document validations			
2020	72.720	11.195	83.915
2021	26.738	6.410	33.148
2022	26.065	4.587	30.652

Table 1 – Statistical data provided by SEF to the Ombudsman (Provedor de Justiça, 2023, p. 5*)*

Such dynamics are not unique to the Portuguese case. Similar patterns have been identified in other Southern European migration regimes, where regularization-oriented policies, when not accompanied by adequate administrative adaptation, tend to produce cyclical backlogs and procedural congestion (Peixoto, 2001).

By early 2023, the scale of administrative accumulation had become particularly evident, with nearly 290,000 pending cases, a figure later revised upwards to over 400,000 by AIMA (Diário de Notícias, 2024a). These figures point to a structural imbalance between inflows into the system and the Administration's processing capacity. From a governance perspective, backlog accumulation becomes an institutional signal of governance failure, revealing the limits of legal reforms that prioritize access without strengthening administrative infrastructure.

In this context, the persistent failure to comply with legally established deadlines - namely the 90-day decision period provided for in Article 82(5) of Law no. 23/2007 - cannot be understood merely as administrative inefficiency. Rather, it reflects a

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structural mismatch between legal expansion and institutional capacity, consistent with the governance gap identified in migration literature (Boswell, 2019).

The legislative response introduced by Decree-Law no. 37-A/2024 can be interpreted in light of the structural imbalance between the expansion of legal migration pathways and the Administration's limited processing capacity. By revoking key provisions of Articles 88 and 89, particularly the "Expression of Interest" mechanism, the reform effectively reintroduced a more restrictive, visa-based model of access to residence permits.

From a migration governance perspective, this reform reflects a shift from managing demand through institutional adaptation to containing it through legal restriction. Similar dynamics have been identified in migration governance literature, where restrictive reforms emerge as responses to accountability pressures and institutional constraints (Costello & Mann, 2020; Gammeltoft-Hansen & Tan, 2020).

More broadly, the Portuguese case illustrates a cyclical governance dynamic in which legal expansion generates administrative overload and judicial mobilization, followed by restrictive reforms aimed at restoring institutional equilibrium.

Against this backdrop, administrative congestion cannot be understood merely as an issue of institutional inefficiency. It has direct and tangible consequences for the legal position of migrants. As the gap between formal entitlements and their effective implementation widens, individuals are increasingly compelled to seek alternative avenues to secure their rights. Administrative inaction thus reshapes the modes through which rights are claimed and enforced, contributing to the growing recourse to judicial mechanisms, particularly urgent procedures aimed at compelling administrative decisions.

Within this context, the injunction for the protection of rights, freedoms, and guarantees thus emerges not as an exceptional remedy, but as a structurally induced response to governance failure, raising important questions about its role, limits, and implications within contemporary migration governance systems.

4 URGENT PROCESSES: THE CASE OF THE PETITION FOR THE PROTECTION OF FUNDAMENTAL RIGHTS - ARTICLE 109 OF THE CPTA

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ISSN: **2316-753X**

Article 109 of the CPTA provides for an urgent injunction aimed at ensuring the protection of rights, freedoms, and guarantees in situations where administrative action is required. This mechanism is designed to offer a rapid judicial response in cases where fundamental rights are at risk.

Formally conceived as an exceptional and urgent remedy, the injunction for the protection of rights, freedoms, and guarantees under Article 109 of the CPTA has increasingly assumed a central role in migration-related disputes. Its growing use suggests that access to fundamental rights is becoming contingent upon the ability of individuals to engage in legal mobilization. In this context, judicial intervention operates not merely as a safeguard, but as a necessary pathway to secure administrative action, thereby shifting the practical locus of rights protection from administrative processes to the courts.

The importance of administrative litigation in safeguarding constitutional rights has long been emphasized in Portuguese legal doctrine. As Vasco Pereira da Silva states, "[in] fact, it is not possible, in each country, to speak of the protection of fundamental rights without judicial guarantees, without the existence of adequate administrative litigation to ensure full and effective protection of the rights of individuals in administrative relationships. Thus, through this means, the "fate" of the Constitution is played out in administrative litigation, and it is not possible to dissociate Constitutional Law from its implementation through the actions of administrative courts." (Silva, 2000, p. 66; Martins & Rodrigues, 2024).

This doctrinal perspective highlights the structural relationship between constitutional guarantees and administrative justice. A constitutional system that formally recognizes fundamental rights requires procedural mechanisms capable of ensuring their timely and effective enforcement. In this sense, administrative litigation constitutes one of the principal institutional instruments through which constitutional rights acquire practical meaning in everyday administrative relations.

Naturally, administrative litigation encompasses a wide range of procedural mechanisms. However, in situations involving the urgent protection of fundamental rights, specific forms of expedited judicial intervention assume particular importance. These include, among others, urgent challenges to administrative acts in electoral matters, urgent contractual disputes, and injunctions for the provision of administrative information or documentation, as provided for in Articles 97 to 108 of the CPTA.

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Submetido em: 01/09/2026
Aprovado em: 17/10/2026
Avaliação: Double Blind Review e
ISSN: **2316-753X**

Mário Aroso de Almeida distinguishes these forms of procedures, characterizing injunctions as urgent enforcement mechanisms capable of requiring concrete administrative actions, including the adoption of specific measures or the performance of administrative acts. This distinguishes them from other urgent procedures that primarily involve suspension, annulment, or declaration of nullity of contested administrative decisions. (Almeida, 2006, pp-34-50).

More specifically, the injunction for the protection of fundamental rights provided for in Article 109 of the CPTA is designed to ensure the effective safeguarding of constitutionally protected rights. While these rights are primarily grounded in the Constitution of the Portuguese Republic (CRP), their scope must also be understood considering Portugal's international legal commitments. Fundamental rights protection is reinforced by international instruments such as Articles 8 and 10 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights, and Articles 6 and 13 of the European Convention on Human Rights, all of which enshrine the right to effective judicial protection (Botelho, 2011, p. 41; Rodrigues & Cabete, 2024).

The constitutional basis for urgent judicial protection is explicitly reflected in Article 20(5) of the Portuguese Constitution, which guarantees judicial procedures characterized by speed and priority for the defense of personal rights, freedoms, and guarantees. This provision establishes the normative foundation for the existence of expedited procedures capable of ensuring timely judicial protection against threats or violations of fundamental rights.

From a socio-legal perspective, however, the relevance of Article 109 extends beyond its formal legal structure. Its significance lies in the ways in which it is mobilized in practice, particularly by individuals whose access to rights depends on timely administrative decisions. In migration contexts, where delays in administrative procedures may directly affect employment, residence status, and access to essential services, the availability of urgent judicial remedies becomes a decisive factor in determining the effective enjoyment of fundamental rights.

4.1 PREREQUISITES OF THE INJUNCTION PROCESS

The normative foundation of the injunction for the protection of fundamental rights is deeply rooted in the right to effective judicial protection, a principle that is

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Submetido em: 01/09/2026
Aprovado em: 17/10/2026
Avaliação: Double Blind Review e
ISSN: 2316-753X

significantly reinforced by a robust framework of international and European legal instruments. This protective shield is not limited to domestic provisions but is bolstered by Articles 6 and 13 of the European Convention on Human Rights (ECHR) and the Universal Declaration of Human Rights, which establish the necessity of a prompt and effective remedy against rights violations.

In this context, Martins & Rodrigues (2024) argue that national courts increasingly act as the ultimate guarantors of a protection standard that is simultaneously national and supranational. By mobilizing Article 109 of the CPTA in response to administrative failure, the Portuguese judiciary ensures that the "fate" of the Constitution and, by extension, the international commitments of the State, is effectively played out within administrative litigation. This perspective aligns with the view that judicial intervention in migration governance serves to bridge the gap between formal legal entitlements and their practical realization, upholding a legal order where national sovereignty and European human rights standards are inextricably linked.

The injunction for the protection of rights, freedoms, and guarantees, provided for in Article 109 of the CPTA, is formally designed as an exceptional and urgent judicial mechanism aimed at ensuring the timely protection of fundamental rights. From a doctrinal perspective, the procedure is structured around three main prerequisites: subsidiarity, indispensability, and procedural adequacy, as identified by Catarina Santos Botelho (2011, pp. 33-40). However, in the context of migration governance, the relevance of this mechanism lies not only in their legal formulation but also in the way they shape access to justice in situations of administrative inaction.

The first prerequisite, subsidiarity, is expressly provided in Article 109(1) of the CPTA and requires that the injunction be used only when ordinary administrative actions, combined with interim measures, are insufficient to guarantee effective protection of fundamental rights. In legal terms, subsidiarity is not primarily linked to procedural speed, since the timeframes of injunctions and interim measures are formally similar, but rather to the nature of the protection sought and the need for a definitive judicial response (Gomes, 2003).

Catarina Santos Botelho highlights that the distinction between injunctions and interim measures lie precisely in this element. While interim measures are provisional and instrumental, injunctions constitute autonomous procedures capable of producing definitive judicial decisions with res judicata effects. According to the author, the

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Submetido em: 01/09/2026
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Avaliação: Double Blind Review e
ISSN: **2316-753X**

legislator deliberately preserved the exceptional character of injunctions for two principal reasons: first, to establish a filtering mechanism capable of preventing excessive litigation and judicial overload; and second, because the urgent nature of the procedure implies a reduction in procedural stages, which would be incompatible with its generalized use (Botelho, 2011, pp. 34–36)..

The second prerequisite, indispensability, requires the applicant to demonstrate that urgent judicial intervention is absolutely necessary to ensure the timely exercise of a right, freedom, or guarantee. It is not sufficient to claim difficulty or inconvenience in exercising a right; rather, the applicant must show that, without the injunction, there is a real risk of irreversible loss of the possibility of exercising the right or even of the right's complete disappearance (Gomes, 2003, p. 22). This requirement reinforces the exceptional nature of the mechanism and ensures that it is reserved for situations where fundamental rights are directly and concretely threatened. In practical terms, urgency emerges where the time required for administrative decision-making conflicts with the time necessary for the effective exercise of the right at stake.

The third element, procedural adequacy, concerns the possibility of converting procedural forms in order to ensure effective judicial protection. Catarina Santos Botelho, drawing on the work of Mário Aroso de Almeida, Carla Amado Gomes, and Sofia David, highlights that courts may convert injunction proceedings into interim measures when such conversion enables faster provisional protection. At the same time, the author raises the question of whether the opposite conversion—from interim measures to injunctions—should also be permitted when necessary to guarantee effective judicial protection (Botelho, 2011, p. 38).

Jurisprudence has not been entirely consistent in this regard. In two decisions of the Coimbra Administrative and Tax Court, proceedings were converted into injunctions on the grounds that delays in ordinary actions would render the applicants' rights to access higher education meaningless. However, the Supreme Administrative Court later considered these conversion orders inappropriate, illustrating the doctrinal and jurisprudential tensions surrounding procedural adequacy (Botelho, 2011, p. 40).

From a socio-legal and migration governance perspective, these legal prerequisites should not be understood merely as technical procedural conditions. They also function as institutional filters that shape access to justice and determine who can effectively mobilize Article 109. Migrants do not resort to this mechanism

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Submetido em: 01/09/2026
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ISSN: 2316-753X

randomly; rather, injunctions tend to be mobilized in situations where administrative delays directly affect their capacity to live, work, or access essential services.

In practice, Article 109 is most commonly mobilized in cases involving prolonged delays in residence authorization decisions, lack of scheduling for biometric appointments, or administrative silence exceeding legal deadlines. In such contexts, the requirement of indispensability is typically linked to concrete risks, such as loss of employment opportunities, inability to renew labour contracts, restricted access to healthcare, or legal uncertainty regarding residence status.

This pattern of use suggests that Article 109 operates as a form of legal mobilization triggered by structural administrative incapacity. Rather than functioning solely as an exceptional constitutional remedy, it becomes a strategic procedural instrument through which migrants and their legal representatives seek to transform formally recognized rights into effective entitlements.

Labour migrants and applicants awaiting residence authorization under Articles 88 and 89 of the Law on Foreigners appear to be among the primary users of this mechanism, particularly where access to employment and legal residence depends on timely administrative decisions. In this context, lawyers, migrant support organizations, and specialized legal professionals play a crucial role in identifying Article 109 as an effective procedural strategy capable of compelling administrative action.

In this sense, the legal prerequisites of Article 109 perform both a normative and governance function: they define the legal boundaries of urgent judicial protection while simultaneously structuring the social dynamics through which individuals access justice. This dual role aligns with socio-legal scholarship emphasizing that legal instruments operate within institutional constraints and power relations, shaping patterns of inclusion and exclusion in migration governance contexts.

4.2 WHICH RIGHTS, FREEDOMS, AND GUARANTEES FALL WITHIN THE SCOPE OF ARTICLE 109 OF THE CPTA?

There is no absolute consensus in legal doctrine regarding the scope of rights, freedoms, and guarantees that may be protected through the injunction provided for in Article 109 of the CPTA. According to Catarina Santos Botelho, the dominant doctrinal position tends to limit the scope of the injunction to the rights, freedoms, and guarantees enshrined in Part I, Title II of the Portuguese Constitution, as well as to

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Submetido em: 01/09/2026
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Avaliação: Double Blind Review e
ISSN: 2316-753X

rights of an analogous nature (Botelho, 2011, p. 47). This interpretation seeks to preserve the exceptional character of the mechanism by restricting its application to the core of constitutionally protected fundamental rights.

However, this restrictive approach has been questioned by several authors who argue that such a narrow interpretation may not fully reflect the constitutional logic of fundamental rights protection. Monteiro contends that limiting the scope of Article 109 exclusively to constitutionally enumerated rights is not entirely consistent with the broader constitutional framework, particularly in light of Article 17 of the Constitution, which extends the regime of rights, freedoms, and guarantees to rights of an analogous nature (Monteiro, 2021, p. 242). This interpretation suggests a more flexible constitutional understanding, capable of accommodating evolving forms of rights protection beyond strictly enumerated provisions.

Going further, Venâncio defends an even broader interpretation of the scope of Article 109, arguing that the injunction should extend not only to constitutional rights, freedoms, and guarantees, but also to fundamental rights deriving from ordinary legislation and international legal instruments. From this perspective, effective judicial protection should not depend exclusively on formal constitutional classification, but rather on the substantive relevance of the rights at stake (Venâncio, 2007, p. 69). Such an interpretation reinforces the centrality of judicial guarantees as a core component of administrative litigation and highlights the role of courts in adapting legal mechanisms to concrete situations of protection.

An important empirical contribution to this debate is provided by Sofia David's study (2011), which analyzed injunction cases filed in administrative courts since 2004 using data extracted from the Administrative and Tax Courts Information System. The study demonstrates that, in judicial practice, injunctions have been used not only to protect classical rights, freedoms, and guarantees listed in Part I, Title II of the Constitution, but also to safeguard economic, social, and cultural rights, particularly in situations where these rights are closely intertwined with personal and procedural guarantees (David, 2011, p. 17).

According to David, the practical application of Article 109 reveals that the boundaries between different categories of fundamental rights are frequently blurred in real-life litigation. Courts tend to adopt pragmatic approaches that prioritize effective protection over rigid doctrinal categorization, especially when delays or administrative omissions produce tangible consequences for individuals' daily lives (David, 2011, p.

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18). This empirical finding is particularly significant because it illustrates how formal legal classifications are reshaped through judicial practice.

This evidence suggests that Article 109 operates in practice as a flexible mechanism of fundamental rights protection, capable of adapting to situations in which administrative action or inaction directly affects individuals' legal and social conditions. As David further observes, the extension of injunctions to rights primarily categorized as economic, social, and cultural reflects judicial willingness to ensure effective protection whenever fundamental interests are at stake, even when these rights do not formally fall within the traditional category of rights, freedoms, and guarantees (David, 2011, p. 19).

From a socio-legal and migration governance perspective, this broader interpretative trend is particularly relevant. Residence authorization procedures frequently involve rights that cannot be neatly categorized within a single constitutional domain. Access to residence status is closely connected to employment, healthcare, education, housing, and social protection, creating situations in which administrative delays affect multiple dimensions of migrants' fundamental rights simultaneously.

In migration-related litigation, the protection of residence-related rights often entails the indirect protection of other fundamental interests, such as the right to work, access to healthcare services, family life, and social security. As a result, judicial interpretation of Article 109 increasingly reflects a functional understanding of rights protection, in which the legal relevance of a claim derives from its practical consequences rather than from its formal constitutional classification.

This functional approach also illustrates how courts operate as institutional actors within migration governance systems. By interpreting the scope of Article 109 in a flexible manner, administrative courts contribute to shaping the boundaries of access to justice and influence the conditions under which migrants can effectively claim their rights. In this sense, the evolving scope of Article 109 reflects not only doctrinal debates but also broader institutional responses to administrative constraints and governance pressures.

The practical operation of Article 109 reveals a shift from exception to routine, as a mechanism originally designed for urgent protection becomes increasingly integrated into systems marked by persistent administrative delay. By extending judicial protection to a broader spectrum of rights, courts are effectively called upon to mitigate structural deficiencies within public administration. In this sense, litigation no longer

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Submetido em: 01/09/2026
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ISSN: 2316-753X

functions merely as a corrective tool, but as a recurring feature of migration governance.

The scope of Article 109, therefore, emerges not from formal interpretation alone, but from the interaction between judicial practice, institutional limitations, and the lived realities of those affected by administrative inaction. Within the migration context, administrative courts assume a decisive role in translating formal rights into practical outcomes, reinforcing their position as central actors in the effective realization of fundamental rights.

4.3 ARTICLE 109 AS A GOVERNANCE MECHANISM

The growing use of Article 109 in migration-related disputes cannot be understood solely as a procedural development within administrative litigation. Rather, it reflects a broader institutional response to structural administrative constraints identified in the previous sections.

As delays in residence authorization procedures became persistent, the distance between legal entitlement and administrative delivery widened, creating conditions in which judicial intervention became a necessary mechanism for securing legal protection. In this sense, the increasing recourse to urgent injunctions should be interpreted as an institutional reaction to governance limitations, rather than as an isolated legal phenomenon (Boswell, 2018; Provedor de Justiça, 2023).

From a socio-legal perspective, the mobilization of Article 109 illustrates how individuals respond strategically to administrative inaction. Migrants facing prolonged delays in residence procedures often rely on judicial mechanisms not only to resolve individual disputes but to compel administrative authorities to act within legally established timeframes. This pattern of legal mobilization reflects broader findings in migration studies, which emphasize that migrants actively engage with legal systems in order to transform formal legal status into practical access to rights and opportunities (de Haas, 2021; Ambrosini, 2021).

Within this framework, administrative courts emerge as key institutional actors in migration governance. As highlighted in Portuguese administrative law doctrine, the effectiveness of constitutional rights depends not only on their formal recognition but on the existence of judicial mechanisms capable of ensuring their implementation (Silva, 2000; Martins & Rodrigues, 2024). Empirical evidence further suggests that

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Submetido em: 01/09/2026
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ISSN: **2316-753X**

judicial practice often adapts legal mechanisms to concrete social contexts, particularly when administrative delay threatens the effective exercise of fundamental rights (David, 2011).

The operation of Article 109 therefore reveals a dual institutional function. On the one hand, it provides a normative mechanism for the urgent protection of rights, freedoms, and guarantees, as emphasized in doctrinal analyses of urgent administrative procedures (Botelho, 2011). On the other hand, in practical terms, it functions as a governance instrument that compensates for administrative shortcomings by enabling individuals to trigger judicial oversight of bureaucratic performance.

The growing reliance on Article 109 can be understood as a response to structural imbalances between procedural demand and administrative capacity in migration systems. As these pressures intensify, the injunction evolves beyond its original exceptional character and becomes a regular mechanism through which individuals engage with the state. Judicial intervention, in this framework, operates less as an anomaly and more as a functional instrument that converts administrative passivity into binding obligations.

From this perspective, Article 109 is better conceived not simply as a procedural safeguard, but as an integral element of contemporary migration governance. Its significance lies in illustrating how legal mobilization, institutional constraints, and adjudicatory practices converge to shape the concrete realization of formally recognized rights.

5 INJUNCTION FOR THE PROTECTION OF RIGHTS, FREEDOMS, AND GUARANTEES IN THE ABSENCE OF ADMINISTRATIVE RESPONSE TO AR REQUESTS

As discussed throughout this study, the significant increase in the number of foreign residents in Portugal has led to a substantial rise in residence authorization (AR) applications, submitted first to SEF and later to AIMA. This growing demand has generated a structural backlog, as administrative authorities have frequently failed to comply with the 90-day decision deadline established in Article 82(5) of Law No. 23/2007.

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Submetido em: 01/09/2026
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In many cases, administrative response times exceed two years, producing prolonged legal uncertainty for applicants and reinforcing the distance between legal entitlement and administrative delivery. This situation also raises concerns regarding compliance with the principle of good administration, which requires public authorities to act with efficiency, economy, and speed under Article 5(1) of the Code of Administrative Procedure.

Within this context, a central procedural question emerges: what legal remedy is available when the Administration simply fails to decide? While the Aliens Law provides for mechanisms to challenge unfavorable administrative decisions, most of these remedies have devolutive effects and presuppose the existence of a formal decision (Alexandrino, 2008, p. 90).

In situations of administrative silence, however, applicants are confronted with a procedural gap, as the absence of a formal decision prevents the use of conventional appeals. In response to this institutional barrier, migrants and their legal representatives have increasingly mobilized the injunction for the protection of rights, freedoms, and guarantees under Article 109 of the CPTA as a mechanism to compel administrative action, transforming administrative silence into a trigger for judicial intervention.

This dynamic is partly explained by the asymmetry between residence renewal procedures, where the absence of a decision within the legal time limit may result in tacit approval (Article 82(7) of Law No. 23/2007 of 4 July), and initial residence authorization requests, where no equivalent automatic legal effect is provided (see Articles 106(8), 108(7), 132(3), and 136(3) of Law No. 23/2007 of 4 July).

Recent reports illustrate the scale of this phenomenon. In the Administrative Court of Lisbon alone, approximately one hundred injunction cases related to residence authorization or renewal requests have been filed, with the total number exceeding 3,200 cases nationwide. Projections suggesting the possible arrival of 350,000 new administrative cases further reinforce the perception that injunctions are becoming a central procedural tool in migration litigation (Diário de Notícias, 2024b; Sábado, 2024). This trend suggests that Article 109 is progressively evolving from an exceptional procedural remedy into a recurring institutional response to administrative inaction.

At the same time, the growing reliance on injunctions raises important legal and institutional concerns. The injunction for the protection of rights, freedoms, and

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guarantees is admissible only when there is a concrete injury or imminent threat to a fundamental right requiring urgent judicial protection. Therefore, the mere expiration of the 90-day administrative deadline does not automatically justify recourse to Article 109. As emphasized in legal doctrine and jurisprudence, the injunction cannot function as a general procedural acceleration mechanism designed solely to bypass administrative delays or create advantages among applicants.

This raises a further question of practical relevance: to what extent are these injunctions an appropriate legal mechanism for obtaining administrative responses without undermining the exceptional nature of urgent procedures? Empirical evidence suggests a more complex reality. Sofia David's study indicates that only 15% of injunctions presented in first-instance administrative courts resulted in decisions on the merits, and only 8% of these injunctions were successful (David, 2011, p. 16). These findings indicate that injunctions have historically functioned as highly selective mechanisms rather than as generalized procedural shortcuts.

In this sense, the growing number of injunctions in residence authorization cases should not be interpreted solely as evidence of procedural misuse. Rather, it reflects increasing patterns of legal mobilization in response to administrative inaction, combined with the restrictive admissibility criteria imposed by courts. The selective nature of Article 109 reinforces its institutional function as a filtered mechanism of urgent protection rather than a routine administrative substitute.

This limitation is closely connected to the role of administrative courts. Courts cannot replace the Administration in issuing residence authorizations; instead, they may only impose the duty to decide. As emphasized by Mário Aroso de Almeida, when primary decision-making authority is assigned to administrative bodies, judicial intervention remains limited to condemning the Administration to act, without substituting administrative discretion by directly granting the requested residence permit (Almeida, 2006). Judicial protection therefore assumes a declarative and procedural nature, reinforcing the separation between administrative and judicial functions.

Case law from the Southern Central Administrative Court (TCAS) illustrates the practical operation of this institutional boundary. In the judgment of 29 November 2022 (Case No. 661/22.0BELSB), the court confirmed a lower court decision ordering the Administration to issue a decision on a residence authorization request within fifteen days. However, the court explicitly clarified that the expiration of the 90-day legal

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deadline did not entitle the applicant to the automatic granting of a residence permit, reaffirming that judicial intervention is limited to imposing the duty to decide.

In the same case, the Administration argued that the excessive use of injunctions could transform Article 109 into a procedural acceleration tool, allowing applicants to circumvent ordinary administrative procedures and potentially undermining principles of legality and equal treatment. This position reflects broader governance concerns regarding the sustainability of procedural systems faced with increasing litigation demand and limited administrative capacity.

At the same time, jurisprudence has recognized that the absence of a residence permit may directly affect the exercise of fundamental rights. In earlier decisions, such as the judgment of 30 January 2020 (Case No. 1899/18.0BELSB), the court acknowledged that the lack of a valid residence document could justify urgent judicial protection in cases of administrative omission. Similarly, in the 2022 judgment, the court associated the absence of residence documentation with concrete restrictions affecting daily life, including limitations on access to employment, healthcare, mobility, and basic civil transactions. These limitations were considered capable of affecting human dignity and individual freedom, thereby falling within the scope of fundamental rights protection.

Empirical evidence further supports this interpretation. Ombudsman's report on the extinction of SEF (2023) highlights cases in which migrants holding only proof of application were denied access to social and health benefits due to administrative misunderstandings or lack of coordination between public services. Although such situations do not occur uniformly in all cases, they demonstrate how administrative uncertainty may translate into real constraints on the exercise of fundamental rights, reinforcing the need for effective judicial protection in specific circumstances.

Nevertheless, jurisprudence consistently emphasizes that urgency must be assessed on a case-by-case basis. In the TCAS judgment of 22 June 2017 (Case No. 2957/16.0BELSB), the court clarified that the injunction cannot be invoked solely on the basis of administrative omission. Applicants must demonstrate that ordinary procedural mechanisms are insufficient and that urgent intervention is indispensable to safeguard the timely exercise of a fundamental right. This requirement preserves the exceptional nature of Article 109 and prevents its automatic application to all residence authorization cases.

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Taken together, these judicial decisions reveal a structural tension at the heart of migration governance in Portugal. On the one hand, persistent administrative delays generate conditions that encourage migrants to resort to urgent judicial mechanisms in order to secure fundamental rights. On the other hand, courts seek to maintain the exceptional character of Article 109 and prevent its transformation into a generalized procedural shortcut. The injunction for the protection of rights, freedoms, and guarantees thus emerges as a legal instrument positioned between systemic exclusion and judicial restraint, reflecting the broader challenge of balancing effective rights protection with institutional capacity in contemporary migration governance.

Case law has generally supported the use of this mechanism, particularly in situations where there is a clear risk to fundamental rights and human dignity. Judicial intervention has proven effective in compelling the Administration to issue decisions, even when such intervention results only in the imposition of a duty to decide rather than the direct granting of residence authorization. In this sense, Article 109 functions as a procedural catalyst capable of transforming administrative silence into legally enforceable obligations.

However, the increasing reliance on urgent judicial remedies raises critical concerns from a socio-legal perspective. Access to such mechanisms is not uniformly distributed, as it depends on individuals' legal awareness, financial resources, and capacity to engage with legal professionals and judicial institutions. Consequently, the judicialization of administrative inaction may inadvertently reinforce existing inequalities, privileging those who are better positioned to mobilize the law while leaving others exposed to prolonged administrative uncertainty and exclusion.

In this sense, legal mobilization should be understood not only as a tool for rights enforcement, but also as a structural site where governance limitations and social inequalities intersect. The growing recourse to Article 109 therefore reflects both the resilience of judicial protection mechanisms and the structural fragilities of administrative systems operating under sustained pressure. Rather than resolving the underlying causes of administrative delay, litigation reveals the institutional tensions that shape contemporary migration governance and highlights the limits of relying on judicial intervention as a substitute for administrative capacity.

6 FINAL CONSIDERATIONS

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Among the various possible approaches to administrative litigation concerning residence authorization (AR), this study focused specifically on litigation arising from administrative inaction. This choice reflects the growing relevance of a phenomenon that directly affects thousands of foreign citizens in Portugal, whose access to legal residence remains contingent upon administrative decisions that are frequently delayed beyond the legally established timeframes.

As the analysis has shown, the expansion of migration flows and the increasing attractiveness of Portugal as a destination country must be considered alongside the structural consequences of successive legislative reforms. While these reforms have broadened access to legal residence, particularly through labour market participation, they have also generated significant pressure on administrative institutions. This dynamic has progressively transformed administrative delay into a structural condition affecting the practical realization of rights.

This procedural gap produces tangible consequences for migrants seeking residence authorization. The Administration's inability to issue timely decisions places applicants in prolonged situations of legal uncertainty, often without a valid residence document. In practice, this condition may restrict access to employment, healthcare, mobility, and other essential aspects of daily life, thereby creating situations of vulnerability that raise concerns not only in legal terms but also from a broader socio-legal perspective.

Within this context, the injunction for the protection of rights, freedoms, and guarantees emerges as a central procedural instrument. From the perspective of applicants, Article 109 of the CPTA constitutes one of the most effective mechanisms for securing judicial intervention in situations of administrative silence. Both legal doctrine and jurisprudence have tended to adopt a relatively broad understanding of the rights that may fall within its scope, particularly where economic, social, and cultural rights are closely linked to constitutionally protected rights, freedoms, and guarantees. As argued by Sofia David, such an approach is justified where these rights are sufficiently defined in legal norms and directly connected to the effective exercise of fundamental rights (David, 2011, pp. 18–19).

Case law examined in this study confirms this tendency. Courts have generally accepted that the absence of a timely administrative response in residence authorization procedures may affect fundamental rights, particularly where it intersects with human dignity, as enshrined in Article 1 of the Constitution. The lack of a legal

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residence document may expose individuals to precarious living conditions, including risks of labour exploitation and social exclusion, thereby reinforcing the legitimacy of urgent judicial protection in specific circumstances.

Such a development would have broader implications. The widespread use of injunctions could create inequalities among applicants, allowing some individuals to obtain faster decisions through judicial intervention while others remain subject to administrative delays. At the same time, it may place additional pressure on administrative courts, potentially altering their institutional role and creating perceptions of judicial alignment with applicants against administrative authorities.

From an institutional perspective, this dynamic reveals a deeper structural tension. On the one hand, administrative inaction generates conditions that make judicial intervention necessary for the effective protection of rights. On the other hand, excessive reliance on judicial mechanisms risks overburdening courts and obscuring the underlying problem of insufficient administrative capacity.

In extreme cases, repeated judicial orders requiring the Administration to decide within specific deadlines may prove difficult to implement, not due to unwillingness, but due to institutional limitations, thereby reproducing the very cycle of delay that litigation seeks to overcome.

Ultimately, the Portuguese case illustrates a broader challenge within contemporary migration governance systems: how to ensure the effective realization of rights in contexts where legal frameworks expand more rapidly than institutional capacity. The growing role of Article 109 reflects both the resilience of judicial protection mechanisms and the limits of administrative performance. Rather than resolving this tension, litigation reveals it.

In this sense, the injunction for the protection of rights, freedoms, and guarantees should be understood not only as a legal remedy, but as a key indicator of governance dynamics. Its increasing use signals the transformation of administrative litigation into a central mechanism through which individuals seek to bridge the gap between formal entitlements and their practical realization, raising fundamental questions about the sustainability of governance models that rely on judicial intervention to compensate for structural administrative shortcomings.

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Submetido em: 01/09/2026
Aprovado em: 17/10/2026
Avaliação: Double Blind Review e
ISSN: **2316-753X**

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