

THE JUDICIAL WORKPLACE AND THE INTERSECTION WITH JUDICIAL INDEPENDENCE

Fourth Study Commission Questionnaire—2023

For most, appointment to judicial office represents not only immense personal achievement but also public acknowledgment of professional eminence. In this Fourth Study Commission analysis, we will look at the judicial workplace and examine aspects of appointment to judicial office, promotion within the judiciary, equitable allocation and distribution of judicial workload and removal from judicial office. This review also endeavors to consider how the judicial workplace is or is not comparable to other workplaces.

Please answer the following in respect of your own country.

1. APPOINTMENT TO JUDICIAL OFFICE

- A. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.

First instance judges are appointed after a three-year training period.

They are admitted for the training period after a competitive public tender procedure, based on written and oral tests, according on the number of vacancies available.

During the first year, candidates are called “auditores de justiça” (justice auditors) and the training takes place at the centre for judicial studies (cej). In the second year, candidate judges have a training period at first instance courts, under the direction of a training judge.

If candidates prove to be successful during that initial two year training period, they are appointed as trainee judges, and the second training cycle, which corresponds to the third year training, begins. However, only if candidates are deemed to be ready, will they be appointed as judges.

To become a judge in appellate courts and supreme courts, there is a tender procedure, where merit, rather than length of service, is taken into account as criterion of graduation system.

- B. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.

Appointment, dismissal and career promotion for judges is in line with European standards, free from political interference.

- C. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.

In Portugal, there are no affirmative action policies in place concerning recruitment that are race-based, that target ethnic minorities or gender-based.

- D. Describe whether and if so in what way the process of appointment to judicial office is independent of government.

The judges appointment independence is guaranteed by competitive public tender procedure mentioned above (A).

2. PROMOTION WITHIN THE JUDICIARY

- A. Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted.

Yes, it does.

Vacant positions in the appellate courts and supreme courts can occur due to the enlargement of the human resources framework (which happens occasionally from time to time) or due to the opening of a vacancy following the retirement or jubilation of judges (normal situation) or even by reason of the performance of duties on a service commission basis.

Promotion will depend on graduation as above mentioned.

- B. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary.

It is irrelevant. In addition, the Statute of Judicial Magistrates prohibits judicial magistrates from engaging in party political activities of a public nature.

- C. Describe the transparency involved in the process of promotion within the judiciary.

Transparency in promotion tends to be ensured by the competition for access to posts, in which the merit of candidates is assessed/evaluated according to the work carried out in the instance(s) in which they have held office.

The criteria for assessing candidates are published in the notice of competition, which is always published in the Official Gazette of the Portuguese Republic ("Diário da República"). The composition of the selection boards is also published in the Official Gazette.

In addition, the assessment of the applications of eligible candidates is substantiated in the minutes, which are accessible to interested parties.

3. WORKLOAD WITHIN THE JUDICIARY

- A. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

Sitting days for Portuguese Judges are set out in their terms and conditions and can differ depending on the type of Judge and their jurisdiction. For instance, a criminal Judge can sit in court every weekday, and a civil Judge can sit in court only a few days a week. Nevertheless, there is a lot of other work, besides sitting in court, which must be done, especially considering that the Portuguese Judges do not have any assistants.

There are objectives set out by the Superior Council of the Judiciary that must be achieved, that are defined in number of cases that have to be decided, regardless of the number of sitting days or procedural acts.

- B. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –
- (i) that judge's workload is allocated to other judges;
 - (ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.
 - (iii) there are other mechanisms to address judicial delinquency.

The judge's workload can be allocated to other judges: whether a judge that will add that workload to their own, whether a judge that can be designated by the Superior Council to assist that (those) judge (judges) in particular.

- C. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.

Judges can be asked to assist other judges, by the Superior Council of the Judiciary. It is not mandatory that they accept, but it is expected.

4. REMOVAL FROM JUDICIAL OFFICE

- A. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including-
- (i) who decides that the judge is to be removed from office;
 - (ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;
 - (iii) what are the grounds for seeking the removal of a sitting judge;
 - (iv) what is the relationship between violation of the ethics code/principles and removal; and
 - (v) describe the transparency in the process.

In Portugal, the removal of a sitting judge is necessary decided through a disciplinary procedure adjudicated by the superior council. In that procedure, the judge has a right of audience (oral and written), appeal and revision.

The grounds for seeking the removal of a sitting judge are related with the inability to adapt to the demands of the job, dishonourable conduct or conviction for certain kind of crimes (v.g. corruption).

These are normally suitable and transparent disciplinary mechanisms.

- B. If removed from office, describe the adverse consequences that may affect the removed judge including -
- (a) financial (especially pension) consequences;
 - (b) future employment consequences following removal;
 - (c) societal consequences including loss of title or civic decorations; and (d) disciplinary steps that may be taken against the removed judge.

If removed from office, depending on the number of work years, that person may receive a lower pension or no pension at all.

They have no other future employment or societal consequences.

Depending on the reason for which the judge was removed from office, he can be also criminal or/and civil responsible, and can be held liable for the damages caused in the exercise of its functions.