

4th Study Commission – IAJ-UIM Meeting 2022 - Israel

What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision making, governance, assignments, fund and other resources)?

Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

The independence of the Portuguese courts is established in the Portuguese Constitution (article 203.º). According to that provision, Portuguese courts are independent and are only bound by the law.

Also, the decisions made by Portuguese courts are mandatory to all public and private entities and prevail over any other authority (article 205.º, n.º 2).

The Portuguese Constitution grants, as well, that a judge can not be transferred, suspended, retired or fired, except cases foreseen by the law (article 216.º, n.º 1).

Portuguese Judges can not be held accountable by their decision, except cases foreseen by the law (article 216.º, n.º 2).

According to the Constitution (article 217.º, n.º 1), Portuguese judges are nominated, appointed, transferred and promoted by the Superior Judicial Council, which also is responsible to exercise disciplinary action, all previously defined by law.

The Superior Judicial Council is composed of 17 members, the President of the Supreme Court of Justice, elected by his/her peers, 2 members designated by the President of the Republic, 7 members elected by the Portuguese Parliament and 7 members-judges elected by all judges.

According to the Law n.º 36/2007, of the 14th of August, the Superior Judicial Council has financial and administrative autonomy. The government of Portugal grants the Superior Judicial Council the necessary funds to support all expenses with judges of the first instance courts.

Beside the abovementioned, the portuguese government grants the courts the necessary funds, which are managed by a general administration and also a court based administration system within each court.

Court fees are also charged as compensation for the handling of the case and the measures taken in courts.

The Portuguese Judges Association also established and accepted its own ethical pinciples for judges, which contains general principles for the identification and interpretation of ethical issues as well as guidelines for the deliberation and resolution of issues.