

Portugal, Supreme Court of Justice, Decision of 21st March 2013

Member State

 Portugal

Topic

Accountability, Organization of the Judiciary; Council of the Judiciary; disciplinary, civil and criminal liability of magistrates (judges and prosecutors).

Deciding Court Original Language

Supremo Tribunal de Justiça

Deciding Court English translation

Supreme Court of Justice

Registration N

Not applicable.

Date Decision

2013

ECLI (if available)

ECLI:PT:STJ:2013:15.12.6YFLSB.FD

National Follow Up Of (when relevant)

Not applicable.

EU legal sources and CJEU jurisprudence

Charter - articles 11.^o, 20.^o, 21.^o, 41.^o, 47.^o, 48.^o, N.^o 1, 49.^o, 51.^o

ECHR - articles 6.^o, N.^oS1 E 2, 10.^o, N.^oS1 E 2, 14.^o.

ECtHR Jurisprudence

Not applicable.

Subject Matter

Organization of the judiciary; right to fair trial; freedom of expression of judges; presumption of innocence all in the context of disciplinary proceedings; compatibility with EU law.

Legal issue(s)

- Right to a fair trial: are article 168.^o, n.^o 2 of the Statute of the Magistrates, in accordance with article. 212.^o, n.^o 3, of the Portuguese Constitution and arts. 47. of the Charter and 6.^o, n.^o 1, of the ECHR?
 - Freedom of expression of judges: are arts. 82.^o, 87.^o and 92.^o of the Statute of Magistrates as well as articles 3.^o, n.^o 2, al. h), 10.^o and 16.^o, al. a), of DL 58/08, de 09-09, applicable ex vi art. 131.^o of the Statute of Magistrates in accordance with article 11.^o of the Charter and article 10.^o, n.^o 1, of the ECHR?
 - Presumption of innocence: are art. 127.^o of the CPP, ex vi art. 131.^o of the Statute of Magistrates in accordance with arts. 48.^o, n.^o 1, 20.^o and 21.^o of the Charter, and 6.^o, n.^o 2, 14.^o of the ECHR?
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Request for expedited/PPU procedures

Not applicable.

Interim Relief

Not applicable.

Facts of the case

Following disciplinary proceedings against a judge she decided to file an appeal to the Supreme Court of Justice. In the appeal, the judge explicitly asked the same Supreme Court to submit a preliminary ruling to the Court of Justice of the European Union on the above mentioned issues.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Supreme Court of Justice did not however submit such a preliminary ruling to the Court of Justice of the European Union. It argued that Member States have their own systems for protecting fundamental rights through their constitutions and national courts and the Charter does not replace them. Consequently, it is for national courts to ensure, in the first place, respect for fundamental rights, without the need for any preliminary ruling on the questions of law raised. That's why the Supreme Court only decided the matter regarding the national law.

Relation of the case to the EU Charter

As there was no pronouncement by the CJEU, due to the fact that the Supreme Court of Justice

did not submit a preliminary ruling, we are left without a decision on this issue and the rights provided for in the Charter.

Relation between the EU Charter and ECHR

N/A

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

Despite not specifying them in the decision, the Supreme Court invokes jurisprudence of the Constitutional Court, as well as of lower courts, to support its understanding

Strategic use of judicial interaction technique (purpose aimed by the national court)

Not applicable.

Impact on Legislation / Policy

Regarding disciplinary, civil and criminal liability of magistrates (judges and prosecutors), it should be noted that Portugal is part of a group of eight Member States where the authority deciding possible sanctions against judges is a Judicial Council, and not a court (specialized or not) or other body composed of judges[1]; Portugal is part of a group of four Member States where the investigator who will be responsible for the possible disciplinary procedure against a judge is chosen by the High Council for the Judiciary, and not by judges (outside this body) or the Minister of Justice[2]; and finally, Portugal is among most of the Member States in terms of appointments to the High Council of the Judiciary: the members of this body are proposed and elected by judges[3].

Thus, we see that there are still challenges related to the independence of the High Council for the Judiciary that, ultimately, are linked to the very idea of the Rule of Law.

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[1] See, The 2020 EU Justice Scoreboard, p. 45.

[2] Page 46.

[3] Page 47.

Notes on the national implementation of the preliminary ruling by the referring court

Not applicable.

Impact on national case law from the same Member State or other Member States

Not applicable.

Connected national caselaw / templates

Not applicable.

(Link to) full text

<https://jurisprudencia.csm.org.pt/ecli/ECLI:PT:STJ:2013:15.12.6YFLSB.FD>
