

Portugal, Supreme Court of Justice, 24/14.0TELSB-FK.L1-A.S1, Supreme, 26.01.2022.

Member State

 Portugal

Topic

Judicial independence; Impartiality

Sector

Judicial Ethics

Deciding Court Original Language

Supremo Tribunal de Justiça

Deciding Court English translation

Supreme Court of Justice

Registration N

24/14.0TELSB-FK.L1-A.S1

Date Decision

26.01.2022

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Article 10 of the ECHR.

Subject Matter

To know whether the intervention of a judge in a certain decision can be considered suspicious, forcing him to ask to be excused from that process, not intervening in it.

Legal issue(s)

The duty to excuse a judge if he or she believes that his or her impartiality could be jeopardised.

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

Article 203 of the Portuguese Constitution; Article 4, no. 1 of the Law on the Organisation of the Judicial System (Law No. 62/2013, of 26 August); Article 43 of the Portuguese Criminal Procedure Code.

Facts of the case

A certain bank was in the process of being wound up by a judge.

This judge, however, was a client of that same bank, and was part of the group of people who had been harmed by the bank and were litigating for compensation for the damages they had suffered. In view of the above, and believing that his impartiality could be jeopardised, the judge asked to be excused from the proceedings.

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

The Supreme Court, making use of the law sources cited above, agreed with the judge.

Specifically, it took the view that the facts described were likely to jeopardise any decision that might be handed down by the judge, running the risk of it being considered suspect. In other words, according to common sense and the rules of common experience, such a fact was likely to constitute a serious and grave reason to generate public distrust of the judge's impartiality.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

In a way, there is a consistent interpretation, in that the Supreme Court states that both the article of the Constitution and that of the Law No. 62/2013 fulfil the guarantees established in Article 10 of the ECHR.

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

N/A

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

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

In this case, the technique used was to guarantee judicial independence.

Impact on Legislation / Policy

N/A

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

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

Did the national court take into account national case law on fundamental rights?

N/A

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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

N/A

Connected national caselaw / templates

N/A

Other
N/A

(Link to) full text

<http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/51e180fabd4a8aa7802587d700408b26?>

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