

## Portugal, Supreme Court of Justice, 27/16.0GEMMN.E1-A.S1, Supreme, 08.06.2022.

### Member State

 Portugal

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### Topic

Judicial independence; Impartiality

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### Sector

Judicial Ethics

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### Deciding Court Original Language

Supremo Tribunal de Justiça

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### Deciding Court English translation

Supreme Court of Justice

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### Registration N

27/16.0GEMMN.E1-A.S1

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### Date Decision

08.06.2022

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### ECLI (if available)

N/A

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### National Follow Up Of (when relevant)

N/A

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### EU legal sources and CJEU jurisprudence

N/A

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### ECtHR Jurisprudence

Articles 6 and 10 of the ECHR.

Piersack v. Belgium, (8692/79); Cubber v. Belgium (9186/80); Borgers v. Belgium (12005/86); Micallef v. Malta (17056/06).

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### Subject Matter

To know whether the intervention of a judge in a certain decision can be considered suspicious, insofar as that judge is a friend of one of the parties' lawyers.

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### Legal issue(s)

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

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### Request for expedited/PPU procedures

N/A

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### Interim Relief

N/A

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### National Law Sources

Article 32 of the Portuguese Constitution; Article 6-C of the Statute for Judicial Magistrates (Law No. 67/2019, of 27 August); Article 43 of the Portuguese Criminal Procedure Code.

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### Facts of the case

The judge appointed to intervene in a particular case is a friend of one of the parties' lawyers. More specifically, the judge is a visitor to the lawyer's home, is part of the same circle of friends and therefore frequently attends social events, such as dinners, as well as other public events, which are also attended by other people from the judge's circle of friends, who are thus aware of the relationship between the judge and the lawyer. In view of the above, and believing that his impartiality could be jeopardised, the judge asked to be excused from the proceedings.

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

The Supreme Court, making use of the various law sources, didn't agree with the judge. Specifically, the Court held that: (i) the lawyer had no personal connection with the facts of the case; (ii) the connection between the judge and the lawyer was professional and based on legal rules and strict deontological and ethical standards; and that (iii) mere mistrust without serious grounds or serious motivation, which could be perceived as such by the average citizen, does not constitute grounds for excusing the judge.

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### Relation of the case to the EU Charter

N/A

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### Relation between the EU Charter and ECHR

There is this relation. Specifically in view of the ECtHR judgments cited, the Supreme Court states that the ECtHR's consistent case law has taken the path of determining impartiality by subjecting it to a subjective test, focusing on the personal conviction and behaviour of the specific judge, on the

existence of prejudice or bias towards a given case, and to an objective test that takes into account the perception or legitimate external doubt about the guarantee of impartiality. These tests are applied in the judgement.

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#### Use of Judicial Interaction technique(s)

As mentioned above, there is a consistent interpretation, since the tests that are used in this regard by the ECtHR are not only mentioned by the Supreme Court but are also applied in the decision.

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

N/A

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

N/A

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

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

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#### Impact on Legislation / Policy

N/A

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

N/A

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#### 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

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

N/A

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

N/A

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#### 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

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#### 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

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

N/A

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Connected national caselaw / templates

N/A

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Other

N/A

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(Link to) full text

<http://www.gde.mj.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/d96bfb205664ff528025886100318a5b>

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