

Portugal, Lisbon Court of Appeal, 3604/22.7YRLSB-3, Appellate, 11.01.2023.

Member State

 Portugal

Topic

Judicial independence; Impartiality

Sector

Judicial Ethics

Deciding Court Original Language

Tribunal da Relação de Lisboa

Deciding Court English translation

Lisbon Court of Appeal

Registration N

3604/22.7YRLSB-3

Date Decision

11.01.2023

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Article 6 of the ECHR.

Subject Matter

The question is whether a judge can intervene in a case in which a person who, in another case, has charged him with a number of offences is a party.

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

Articles 32, 202 and 203 of the Portuguese Constitution, Articles 43 and 45v of the Portuguese Criminal Procedure Code.

Facts of the case

A is an assistant in a certain case before the court. The Public Prosecutor's Office has filed a motion to remove A as an assistant, and a judge has been appointed to make the decision. However, A, in another case, has accused the same judge of a number of offences, which is why he believes that he is not fit to make the decision to remove him as an assistant.

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

The Court of Appeal, making use of the law sources cited above, didn't agree with A. Specifically, the court understood that: (i) it was not the judge's impartiality that was the basis invoked, but rather the depreciation that A made of the judge's performance in the context of a certain criminal case in which he imputed, in the context of a request for opening of investigation, a series of crimes, which turned out to be unfounded; (ii) no requests were found for the commission of any illegal activity on the part of the judge, nor was it revealed, by the response he gave to the incident of removal, any requests for animosity or reduced capacity for objectivity in the exercise of the function, without due respect to the law; (iii) in addition, the fact that the judge has performed functions in other processes in which A was involved is not, in terms of judicial normality, an impediment to the exercise of functions in an impartial and independent manner in new processes in which A is again intervener. Therefore, the court concluded that A's grounds were not sufficient to call into question the judge's impartiality.

Relation of the case to the EU Charter

N/A

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.

Use of Judicial Interaction technique(s)

In a way, there is a consistent interpretation, insofar as the Court intends for its decision to comply with what is established, in particular, in article 6 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.gde.mj.pt/jtrl.nsf/33182fc732316039802565fa00497eec/0518edd0fe11f9a48025895c003e05d6>

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