

JUDICIAL INDEPENDENCE AND EUROPEAN VALUES IN THE PORTUGUESE STATUTE FOR JUDGES

INDEPENDENCE, IRRESPONSIBILITY
AND IRREMOVABILITY OF JUDGES

- Judicial independence is enshrined in the Portuguese Constitution: according to Article 203 Courts are independent and they shall only obey the law.
- In line with the Constitution, the principle of independence of Judges is laid down in Article 4 of the Portuguese Statute for Judges which provides that:
 - **Judges shall only obey the Constitution and the law**
 - **They shall not receive orders or instructions of any kind.**

INDEPENDENCE

- Article 216 (2) of the Portuguese Constitution lays down that Judges can not be held liable for their decisions unless that is specifically provided by law.
- Accordingly, Article 5 of the Portuguese Statute for Judges provides that: **unless the misbehavior of a Judge is considered a crime, civil liability may operate only through a request for reimbursement of the State against the Judge on the grounds of intentional or serious misconduct.**

IRRESPONSIBILITY

- Irremovability of Judges is entailed by Article 216 (1) of the Portuguese Constitution.
- Accordingly, Article 6 of the Portuguese Statute for Judges provides that:
 - **Judges are appointed for life**
 - **They can not be transferred, suspended, retired, dismissed or by any means changed on their positions, unless it is specifically foreseen in their Statute.**
 - **Moreover, Article 217 of the Portuguese Constitution, lays down that the High Council of Judiciary has exclusive competence to appoint, transfer, promote and exercise disciplinary action over Judges.**

IRREMOVABILITY

- The Venice Commission (the European Commission for Democracy through Law from the Council of Europe) is experienced at providing advice to countries on European standards for the organisation of judiciary.
- In that regard, independence is one of its main concerns, in so far as **the independence of judiciary is a condition for achieving the right to a fair trial under Article 6 of the European Convention on Human Rights.**

EUROPEAN VALUES

- In the early 21st century *Judges appeal to the protection of human dignity, for example, when the unforeseen risks of new invasive technologies lead them to introduce a right to informational autonomy and a right to be forgotten.*
- The judicial discourse shapes social change and courts legitimate the exercise of sovereign power through their legal argumentation and statutory organisation, as mentioned previously.
- In this respect, Article 205 of the Portuguese Constitution highlights the argumentative representativeness of national Judges imposing on courts the duty to substantiate their decisions.

EUROPEAN VALUES

- In view of the different aspects of the violation of human dignity Judges have to decide hard cases that call for a balancing of competing claims: *a justified decision sometimes is possible only by appealing to a violation of human dignity* spelled out in concrete terms at each moment.
- As entailed by Article 4(2) of the Treaty on the European Union, in such cases, national courts are authorized to safeguard the inviolability of principles that are constitutive for democracy and the rule of law.
- Thus, the meaning and the importance of judicial independence as a European value.

EUROPEAN VALUES



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References

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Thank you so much for your attention
