

Questionnaire: PORTUGAL

Rules for ethical conduct of judges, their application and observance

(2004)

A. General Aspects

1. Are there any ethical rules/rules of conduct for judges/magistrates explicitly expressed in the law?

X Yes

If your answer is positive, are these rules made in the shape of a general wording

Quote some examples:

Duty of reserve: the judges can not comment or issue statements concerning specific cases except when authorized by the High Judicial Council and in defence of honour or to fulfil other legitimate interest.

Exclusivity: Judges can not perform any other public or private function of professional nature, except teaching or scientific investigation, without remuneration, and the direction of syndical organizations of judges.

2. Are there ethical rules for judges/magistrates outside the law (e.g in a code of ethics, code of conduct etc.)?

X No

3. Who did elaborate and enact/make the "code"?

See previous negative answer.

4. If you have both a code of ethics and legally fixed ethical rules for judges/magistrates in what way do they complement one another?

See previous negative answer.

5. If you don't have any code of ethics, are there plans in your country to introduce one?

X No.

NOTE: The main deontological dispositions are part of the Judges Statute. Therefore, the following answers will consider this law and not a specific code of ethics, which we don't have.

B. Contents

6. Does your code of ethics include the following principles/aspects:

a) Independence

Yes

b) Impartiality in general

Yes

c) Impartiality and conduct of judges in the exercise of their judicial functions

Yes

d) Impartiality and extra-judicial conduct of judges

Yes

e) Impartiality and other professional activities of judges

No. No other professional activities are allowed.

f) Impartiality and the media

Yes

g) Party politics and judges

Yes

h) Propriety

No

i) Equality

No

k) Competence

No

l) Diligence

No

m) Others:

In case your answer is "yes", please give some examples.

a) The principle of independence of judges has constitutional and legal consecration;

b), c), and e) - Impartiality is object of several warranties, both in the civil and criminal procedure codes and in judges statute. It ranges from preventing a judge to perform in a Court were his/her husband/wife is also a judge, public prosecutor or court clerk to a general rule, stating as disciplinary infractions the facts committed by judges that infringe professional duties and also acts or omissions of public life, or with repercussions in it, incompatibles with the dignity required for the exercise of judicial functions.

f) See above, duty of reserve – question A-1.

g) Except for the function of President of the Republic, member of Government (minister, secretary of state) or of the Council of State, no political activity is allowed. All activity related to a political party is strictly forbidden.

C. Violation of the Code of Ethics

7. What happens if a judge/magistrate violates a duty explicitly stated in a provision of law?

A disciplinary procedure is opened and decided by the High Judicial Council. Disciplinary sanctions can be applied, ranging from a simple reprimand to a dismissal.

8. *What happens if a judge violates a duty stated in the Code of Ethics?*

See previous answer.

9. *Is there any influence of the Code of Ethics on a disciplinary procedure?*

As a rule of law, a disciplinary procedure must refer to a previously stated ethic or deontological rule. The procedure for disciplinary action is detailed on a chapter of the Judges Statute.

10. *Are violations of the Code of Ethics made public?*

No, the disciplinary procedure is confidential until final decision. Only the number and type of disciplinary sanctions, without mentioning the specific judge involved, are made public by the High Judicial Council. Nevertheless, in some past cases that aroused great media interest, the High Council has made public the opening of an inquiry that can be converted to a disciplinary procedure.

D. Judicial Ethics

11. *Is judicial ethics an issue among the judiciary? Why? Why not?*

Some aspects, like the limits of the duty of reserve (eg relations with the media) and exclusivity, are often discussed among the judiciary. However, judicial ethics is not a point of great discussion or controversy.

12. *Is judicial ethics an issue in the public? Why? Why not?*

No, although some criticise the High Council for not imposing enough disciplinary sanctions. The idea behind those voices is placing solely on the judges the responsibility for all the faults of the system but with little success.

E. Analysis

13. *Do you consider a code of ethics an useful institution for the judiciary? Why? Why no?*

Yes. It would clarify and provide more transparency to the evaluation of a specific conduct.

14. *Should the IAJ elaborate and adopt a code of ethics which could serve the national associations as a model? Why? Why not?*

Yes, for the same reasons that the Universal Charter of the Judge was elaborated.

15. *If you have a code of ethics, give some practical hints to those who are willing to introduce one (what should they take care of etc.).*

16. *Other remarks on the topic*

None.

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