POLITICAL INDEPENDENCE

1- In your country and legal system, with respect to reducing the influence of politics on the decisions that are made by judges, what guarantees or provisions of law exist to ensure the independence of judges in their decision-making? NOTE: We list several examples and invite you to add any others that may also apply in your own judicial system:

a- Is there security of a judge’s tenure in office? If so, please describe how this is provided – for example, by constitution, by statute, by judicial rules, etc.

Yes.

The principle of irremovability of judges (security of tenure) is enshrined in the Constitution («Judges are irremovable and can not be transferred, suspended, retired or dismissed unless in cases established by law») and in the Statute («Judges are appointed for life and can not be transferred, suspended, promoted, retired, fired or otherwise have their situation changed, unless in cases provided by this Statute»).

b- Is there legislation that prohibits others in the government from interfering in the judicial decision-making process? If so, please describe.

Yes.

The national Constitution expresses clearly the independence of the judiciary and the obedience only to the law.

The main legal instruments for the independence of judiciary are
a) The Portuguese Constitution: articles 217.º e 218.º

b) Statute of Judges Law 21/85, July 30;

c) Law nº36/2007, 14 August, actualized by Law Lei n.º 10/94, de 05.05, Law n.º 143/99, de 31.08 e Lei n.º 52/2008, de 28.08.

c- Is there legislation that prohibits others outside the government from attempting to influence improperly a judge’s decision? If so, please describe.

The prohibitions results from the Constitutional rules and are binding to public and private sectors.

d- Is there a system to provide for the physical security of a judge and the judge’s family that may be invoked by the judge? If so, how is this security provided and who provides it?

A special law or rule does not provide the physical security of a judge. The general legal framework about security of public servants assures it.

The Presidents of the Supreme Court and Administrative Supreme Court, Constitutional Court have all assigned security regardless of the degree of risk. The other judges are only safe when there is a real risk.

High Judicial Council (CSM) deals with the relationship between the judges and the police for assigning security.

As a rule there is no allocation of security for judges on its own initiative. However, if the intelligence services or the police detect any concrete threat to a judge, procedures are triggered immediately.

Normally security consists in providing automobile transportation to the judge and two police elements for personal safety.

e- Are there any special provisions to ensure a judge’s independence from improper political influence when the judge is deciding a matter involving alleged human rights violations? If so, please describe.
No. The judge's independence is enshrined on the Constitution and is mandatory for all cases. Also the principle of separation of powers is guaranteed on the national Constitution.

f. Please describe any other guarantees or provisions of law that are intended to reduce the influence of politics on a judge’s decision-making?

The judges are under the High Judicial Council (Conselho Superior da Magistratura – CSM) supervision and control.

The High Judicial is an independent organ established by the Constitution and obeys only to the law.

Thus, only the Plenary of the High Judicial Council decide the removal of judges.

The grounds for removal of judges are:
- Disciplinary punishment (transfer, compulsory retirement or dismissal);
- Retirement due to physical or mental disability;
- Retirement due to age (the limit is currently 70 years old).

Sometimes, disciplinary infractions and mental or physical disability are identified during the evaluation process. Other times stem from complaints from lawyers, parties, prosecutors, etc.

The decisions taken by the CSM in this regard may be appealed to a special chamber of the Supreme Court.

APPOINTMENT SYSTEM FOR THE JUDGES/JUSTICES

2- Are the procedures and criteria for judicial selection clearly defined by law in order to ensure transparency in the selection process? Please describe the procedures and criteria that exist.

Yes.
In Portugal, the procedures for the initial recruitment of magistrates (judges and public prosecutors) are in the hands of Centro de Estudos Judiciários (Centre for Judicial Studies). After a training period the candidate is appointed judge by the Conselho Superior da Magistratura (the Portuguese High Judicial Council), this organ is the only with exclusive competence through the judge’s career.

The admission and initial training of Judges are made in the Centre for Judicial Studies. Law no. 2/2008 of 14 January governs the operation and activities of the Centre for Judicial Studies.

Prime Minister appoints the Director of CEJ and Minister of Justice from among judges, public prosecutors, university professors and lawyers for a renewable term of three years. This situation has been sometimes criticized because of the power conceded in this case to the Government.

In the subsequent judicial career, the placement of the judges, following their appointment or their transfer, is based on their classification (the seniority criterion is used to untie judges with the same classification).

Only Judges classified with no less than “Good with distinction” can be appointed to courts with jurisdiction over civil demands worth more than € 30000,00 and criminal cases where imprisonment for more than five years is possible.

The promotion of judges to courts of appeal is made on the basis of merit, assigning a weight of 60% to the classification (and 40% to the curricula). Classifications are also considered in the appointment of career judges to the Supreme Court.

3- Is there a separate expert commission or other authority either outside or inside the judiciary which has jurisdiction and competence to participate in judicial selection, including to conduct examinations of prospective judges if such examination are used in the process of judicial selection? If so, please describe.

See previous answer.

In Portugal, the procedures for the initial recruitment of magistrates (judges and public prosecutors) are in the hands of Centro de Estudos Judiciários (Centre for Judicial Studies).

Regarding the Process of initial admission of Judge’s, we have:
Admission to initial training for judges and public prosecutors is via an open competition announced in the official gazette “Diário da República” and the process by which applicants are chosen involves various methods of selection. The selection procedure is made by CEJ.

Recent developments are imposing new rules to the recruitment of judges for Superior Courts determined by the Law nº26/2008, published in June 27. The procedure imposes an open discussion presided by a jury composed by members of the High Judicial Council, or indicated by the Council, but also by an academic teacher and a lawyer.

ADMINISTRATION OF THE JUDICIARY

4- a- How are the salaries of judges set?

By law. Budget constraints have recently determined substantial cut on the salaries.

The Annual Budget for the public administration sets these cuts trough a Law approved by the Parliament.

b- Are those salaries and any other allowances paid to the judges adequate to satisfy the reasonable living expenses of judges?

The recent cuts have undermined the reasonable satisfaction of the living expenses of judges. Since 2010 the cuts are reaching around 40% of the global salaries and the situation is getting increasingly unacceptable.

c- Do the judges’ compensation adequately reflect the dignity and importance of the judges’ position?

See previous answer. The current situation is reaching a status that will conduct to a negative answer especially considering the previous salaries before the cuts and the correspondent loss of dignity.

5- Is the administrative authority of the chief judges/justices used in a way to influence the adjudication of cases and to affect the content of judicial decision-making? If so, how?

In the present time, the answer is no.
However is now underway a reform of the judiciary that could influence the adjudications of cases by the respective Court President (it must be a judge).

6- To address disciplinary matters involving judges who are accused of violating judicial conduct rules, is or some other body that has the power to:

a- Receive complaints and conduct disciplinary investigations? If so, please describe.

Yes. There is a judicial council named CSM.

In Portugal the CSM is the only management and disciplinary body regulating the Judges. The High Judicial Council (CSM) is the organ with the competences to manage, discipline and classify the judges of the judicial courts.

It is always for the CSM to initiate a disciplinary procedure on the basis of complaints addressed by citizens, civil judicial servants or the inspection service if irregularities have been detected when inspecting the Courts.

This CSM has the following members:

President: President of the Supreme Court, elected by his peers; Vice-President and six judges’ members elected by all the judges, two members appointed by the President of the Republic and seven members appointed by the Parliament. There is also the High Judicial Council for Administrative Courts (CST/AF) with the same legal framework but only with competences regarding Administrative Courts.

b- Hear evidence, make decision based on the evidence, and, if it finds a violation of judicial conduct rules, impose disciplinary measures? If so, please describe.

The CSM in Plenary session is the only body entitled to impose disciplinary punishments on Judges. In Portugal there is a catalogue of sanctions: dismissal, compulsory retirement, compulsory transfer, suspension, fine, reprimand with or without recording. The sanctions are recorded in the judge’s personal file. The SCM chooses the specific sanction according to the circumstances of the case. As the Supreme Court rules on those cases, its jurisprudence sets guidelines for the measurement of proportion.

c- Hear appeals from the decisions that have found disciplinary violations and imposed disciplinary measures? If so, please describe.
Yes, directly to the Supreme Court.

d- Does the person who has made a complaint about a judge’s conduct have an opportunity to participate in whatever process is available for reviewing that conduct? If so, what is the extent of that participation?

When a complaint has been lodged, an inspector analyses it and appraises if it has merits or not. In this process of analysis he(she) can decide on earring the person that made the complaint. If considered without merit, a proposal for rejecting is issued to the Vice-President of the SCM, who can either dismiss the complaint or send it to the Standing Commission for decision.

INTERNATIONAL HUMAN RIGHTS ISSUES

7- What is the source of the law, if any, that a judge takes into consideration when deciding whether and how to enforce international human rights law? For example: the constitution, treaties, laws of the country?

The respect for fundamental rights and freedoms are embodied in the Portuguese Constitution. Also Portugal is part to all the core United Nations Human Rights instruments including the two international covenants on Human Rights, the Convention against racial discrimination and discrimination against women, the Convention on the Rights of the child, the Convention against Torture, both Protocols to International Covenant on Civil and Political Rights (ICCPR), both Protocols to the International Convention on the Rights of the Child (ICRC) and the Protocol to Convention on the elimination of discrimination against women.

8- Do there exist procedures by which your courts may hear cases involving alleged violations of international human rights law when those alleged violations are separate from and independent of the laws of your country law? If yes, please describe these procedures.

No.

However, the country is subject to the European Court of Human Rights under the European Convention on Human Rights. It complied promptly with the court’s decisions. A number of domestic and international human rights groups generally operated without government restriction, investigating and
publishing their findings on human rights cases. The country has an independent human rights ombudsman appointed by parliament who is responsible for defending the human rights, freedom, and legal rights of all citizens. The Ombudsman’s Office operated independently and with the cooperation of the government. Parliament’s First Committee for Constitutional Issues, Rights, Liberties, and Privileges exercises oversight over human rights problems. It drafts and submits bills and petitions for parliamentary approval. During the year new laws went into effect in areas such as the protection of DNA-profile databases, the protection of emigrants’ rights, and the regulation of procedures regarding living wills.

9- If the answer to Question 8 is “No,” are there any types of cases in which a judge may consider and apply principles of international human rights law when making a decision, or is the judge limited to applying fundamental principles of international human rights law in making a decision only if such principles are embodied in the laws of the country?

The judge should consider and apply principles of international human rights law when making a decision because they are legally binding and/or are supported by constitutional principles and European Union treaties and directives.

10- Are there any persons or groups of people who work for the government in your country who have judicial immunity for their illegal actions?

No.