CONSEIL D'ÉTAT

ACA EUROPE

Seminar organized by the French Council of State and ACA-Europe

"Ethics and recruitment of members of the Supreme Administrative Courts and Councils of State"

Versailles, 29 November 2024

Answers to questionnaire: Portugal

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**SEMINAR ORGANISED BY THE FRENCH COUNCIL OF STATE
IN COOPERATION WITH ACA-EUROPE**

ETHICS AND RECRUITMENT

OF MEMBERS OF THE SUPREME ADMINSTRATIVE COURTS AND COUNCILS OF STATE

Questionnaire

The Versailles seminar will address two related topics: ethics and recruitment.

The first topic will be discussed on Friday morning, 29 November, in two round tables. The first will focus on the legal and institutional framework. The second, based on practical cases, will address the content of ethical rules.

The second topic will be addressed on Friday afternoon during the third round table.

Ethics for magistrates was discussed at the seminar organised by AIHJA/IASAJ in September 2020 in Athens. It was also discussed at a meeting of the European Association of Administrative Judges (AEAJ) in May 2023 focusing on the freedom of expression of magistrates. Some of the questions below repeat those asked in the Athens questionnaire. You can, of course, use the answers you provided in 2020 to respond to this questionnaire.

I Ethics: Legal and institutional framework

1.1. General framework

1.1.1. Are the ethical obligations of public officials in general enshrined in your country's positive law?

☒Yes

☐No

If yes, they are enshrined (please check all applicable answers):

☒in the Constitution

☒in the law

☒in a regulatory text

☒in a Charter of Ethics or a Collection of Ethical Principles

☒other

Please explain if necessary:

In Portugal, issues related to ethics and morality are a growing concern both in general society and in the Public Administration. Professionals' ethics in the public sector are defined in various legal texts, such as:

- The Constitution of the Portuguese Republic – establishes that administrative bodies and agents must act with respect for the principles of equality, proportionality, justice, and good faith (article 266).
- The Code for the Administrative Procedure[1] – approves a set of general principles that should guide administrative activity, such as: the principle to pursue public interest; the principle of impartiality; the principle of good administration; and the principle of good faith (articles 3 to 19).
- The General Law on Labour in the Civil Service - defines, among others, as employees' general duties: the duty of impartiality, the duty of exemption; the duty of loyalty and the duty of correctness. (article 73) [2].
- The Charter of Ethics for the Public Administration[3]- has ten principles, aiming to establish a set of guidelines as a benchmark for good practices, enabling the detection of improper behaviour.
- The Codes of Conduct and Ethics in Public Administration – include the key values of civil service through ethical and deontological principles and rules. In this sense, there is no ethical charter applicable to all workers, but several charters adopted by the public administration departments. Examples include the Code of Ethics and Conduct of the Secretary-General of the Ministry of Justice[4]and the Code of Ethics and Conduct for Employees of the Directorate-General for Public Administration[5].

1.1.2. Are the ethical obligations of members of your institution specifically enshrined in your country's positive law?

☒Yes

☐No

If yes, they are enshrined (please check all applicable answers):

[1] Approved by Decree-Law no. 4/2015, January 7, last amended by Decree-Law no. 11/2023, February 10.
[2] Approved by Law no. 35/2014, June 20, last amended by Decree-Law no. 13/2024, January 10.
[3] Available at https://www.dgaep.gov.pt/index.cfm?OBJID=9BB1D4D0-0607-4588-BCAD-894DBC499AFF&MEN=i
[4] Available at https://sgmj.justica.gov.pt/Portals/14/Documentos/Instrumentos%20de%20gestao/Outra%20informacao%20obrigatoria/Codigos%20de%20conduta/CODIGO_DE_ETICA_E_CONDUTA_DA_SGMJ_2019_final.pdf
[5] Available at https://www.dgaep.gov.pt/upload/Instrumentos_Gestao/Codigo_Etica_Conduta.pdf

☒in the Constitution

☒in the law

☒in a regulatory text

☒in a Charter of Ethics or a Collection of Ethical Principles

☐other

Please explain if necessary:

In Portugal, the principles of judicial ethics and professional duties that lead the jurisdictional practice exercise - independence, impartiality, integrity, incompatibilities, prohibition of political activities, duty of confidence, duty of cooperation, duty of urbanity, duty of presenting income declarations – are constitutionally and legally recognised. The ethical norms can be found: a) Constitution of the Portuguese Republic - Articles 202, 203, 216; b) Statute of the Administrative and Tax Courts[6] - Articles 2 and 3; c) Statute of the Judicial Judges[7]- Articles 4 to 8A (alternatively applicable to the administrative and tax jurisdictions in accordance with Articles 7 and 57, Statute of the Administrative and Tax Courts); d) Code for Civil Procedure[8] – article 6-C; e) General Law on Labour in the Civil Service[9] - Article 73 (*ex vi* Article 188, Statute of the Judicial Judges; and f) Law of the Judiciary System[10] – Articles 4 to 6 and 8.

1.2. Charter of Ethics

1.2.1. Does your institution also have a Charter of Ethics or a Collection of Ethical Principles?

☐Yes

☒No

If the answer is yes: On which date was this document adopted?

1.2.2. Is the adoption of this document an obligation for your institution?

☐Yes

[6] Approved by Law no. 13/2002, February 19, last amended by Decree-Law no. 74-B/2023, August 28.
[7] Approved by Law no. 31/85, July 31, last amended by Law no. 2/2020, March 31.
[8] Approved by Law no. 41/2013, June 26, last amended by Law no. 3/2023, January 16.
[9] Approved by Law no. 35/2014, June 20, last amended by Law no. 13/2024, January 10.
[10] Approved by Law no. 62/2013, August 26, last amended by Law no. 18/2024, February 5.

☒No

Please explain if necessary:

The Superior Council for the Administrative and Tax Courts (CSTAF), the judge's management and disciplinary body of the administrative and tax jurisdiction, has the power and duty to develop the Code of Conduct applicable to this jurisdiction (article 19, Law no. 52/2019, of July 31).[11]

1.2.3. Was this document adopted in response to a particular event that stirred public opinion?

☐Yes

☒No

If yes, please explain the legal and political context that led to the adoption of this text:

1.2.4. Who drafted this document?

☐A working group composed exclusively of members of your jurisdiction

☐A working group expanded to include outside persons

☐A working group involving associations of administrative judges

☒Other

Please explain if necessary:

The Superior Council' Code of Conduct, is for approval, and was drawn up by a group of jurists from the President of the Supreme Administrative Court' cabinet, who is inherently the President of the Superior Council for the Administrative and Tax Courts.

1.2.5. Which authority signed and enacted this document?

☐The president of your institution

☒A collegiate body of your institution

☐Other

[11] This law approves the Regime for Political and High Public Office Exercise.

Please explain if necessary:

As previously mentioned, the Superior Council has the legal capacity to create and approve the Code of Conduct. Once approved, the document will be published in the Official Journal and on the Council website, in accordance with no. 1, article 19, Law no. 52/2019.

1.2.6. Has this document undergone one or more revisions?

☐Yes

☒No

Please explain the purpose of these revisions if necessary:

See answer to question 1.2.1.

1.2.7. What is the legal value of this document?

☐This document contains binding legal rules (hard law)

☐This document contains soft law standards

☒Other

Please explain if necessary:

See answer to question 1.2.1.

1.2.8. Please attach this document to your response, if possible in a French or English translation, in the form of an attached document or a web link.

See answer to question 1.2.1.

1.3. Scope of application of ethical rules:

1.3.1. Whether a Charter of Ethics or equivalent text has been adopted or not, do the ethical rules applicable to members of your supreme court apply identically to magistrates in the lower courts of your judicial system?

☒Yes

☐Partially

☐No

Please explain if necessary:

In agreement with the Statute of the Administrative and Tax Courts, the judges of the administrative and tax jurisdiction are a single body and are governed by the Constitution, the Statute and other applicable legislation. The deontological rules are transversal and apply to the entire jurisdiction, regardless of the jurisdiction level or grade (article 57).

1.3.2. To whom do these ethical rules apply?

☒To members of your institution who are active within it

☒To members of your institution who are temporarily not serving there, under secondment or availability arrangements, in other administrations or in the private sector

☐To resigning members

☒To retired members

☐To administrative staff (referendary judges, legal assistants, clerks, interns, etc.) assisting members of your institution

☐Other

Please explain if necessary:

According to this Statute the Portuguese Judges that exercise functions as a judge under service commission are bound to the same rights and duties. Accordingly, retired judges are still bound to statutory duties and remain connected to their previous Court (article 64, no. 2). However, judges that have been granted a long duration leave (above one year and inferior to fifteen years), are not subject to the Statutory rules and may not invoke the quality of judge (article 14, no. 9) to practice their rights.[12]

On the other hand, judicial workers are subject to a set of specific rules stated in the Statute of Court Officials, in accordance with Decree-Law no. 343/99, August 26[13] and to the Regime of Incompatibilities in Civil Service, according to Law no. 35/2014, June 20[14].

1.3.3. In the event that your institution exercises both a judicial and a consultative function, do the ethical obligations imposed on members exercising one or the other of these functions differ?

[12] Cf. the Superior Council' resolution of 24.02.2012, on functional duties regarding retired judges.
[13] Last amended by Decree-Law 73/2016, November 8.
[14] Last amended by Decree-Law 13/2024, January 10.

☐Yes

☐No

☒Not applicable

Please explain if necessary:

The Supreme Administrative Court is the highest body in the hierarchy of the administrative and tax courts, responsible for the judgment of disputes arising from administrative and tax legal relations, under the terms of the jurisdiction scope provided in article 4 of the Statute of the Administrative and Tax Courts.

1.3.4. If there is a duality of jurisdiction in your country distinguishing an administrative jurisdictional order and a judicial jurisdictional order, are the ethical rules applicable to magistrates of these two orders different?

☐Yes

☐Partially

☒No

Please explain if necessary:

1.3.5. If the ethical rules are wholly or partly different for magistrates of these two orders, please indicate one or more examples of obligations that apply to magistrates of only one order or that apply differently to magistrates of each order of jurisdiction:

1.3.6. If the magistrates who make up your institution belong to several different categories (for example, a bench and a public prosecutor's office), are they subject to different ethical rules?

☐Yes

☐No

☒Partially

☐Not applicable

If these ethical rules are wholly or partly different for magistrates of different categories, please give an example.

The Code of Conduct for Public Prosecutors, approved by resolution no. 473/2022, of April 14[15], applies to judges in external service commissions, except of the guidelines and rules that, by their nature, are inapplicable due to the specific situation. (article 2).

1.4. Relationship between ethical and disciplinary rules:

Is a breach of ethical obligations necessarily an offence that may result in disciplinary action?

☐Yes

☒No

If not, please give an example:

1.5. Training on ethical rules:

Are members of your institution made aware of or trained in ethics?

☒Yes

☐No

If yes, how and how often?

The judges receive their training, on professional ethics and deontological matters, at the Centre for Judicial Studies, either through specific training courses designed for this purpose or by promoting the reflection on ethical and deontological issues in the several courses prepared by the different jurisdictions. The Centre' Training Department is responsible for presenting an annual training plan[16].

1.6. The College of Ethics

1.6.1. Has your institution created or does it have a collegiate body or a single authority responsible for answering ethical questions that may arise for members of your institution?

☐Yes

[15] Available at https://diariodarepublica.pt/dr/detalhe/edital/473-2022-182092793
[16] The 2023-2024 Training Plan is available at https://cej.justica.gov.pt/Portals/30/Ficheiros/formacao/continua/FC_2023_204/PFC_2023-2024.pdf?ver=mPL4_pOsCvSE6OzyQaVVBA%3d%3d

☒No

1.6.2. If yes, how is it appointed?

See answer to question 1.6.

1.6.3. If yes and in the case of a collegiate body, how is it composed?

See answer to question 1.6.

1.6.4. Who can refer to this body?

☐A member of your institution for an ethical question concerning them

☐A magistrate from the lower courts for an ethical question concerning them

☐The president of your institution

☐Other members of your institution

☐A litigant who believes that a magistrate has disregarded their ethical obligations

☐This body can refer to itself

☐Others

Please explain if necessary:

See answer to question 1.6.

1.6.5. Are the opinions given by this body made public?

☐Yes

☐No

1.6.6. If yes, are the published opinions anonymised?

☐Yes

☐No

1.6.7. Can these opinions be challenged before the court?

☐Yes

☐No

Please explain the legal scope of these opinions:

See answer to question 1.6.1.

1.7. Declaration of interests

1.7.1. Must members of your institution complete a declaration of interests?

☐Yes

☒No

If yes, please briefly describe the modalities of its submission:

1.7.2. Is there a specific procedure or *ad hoc* body responsible for examining conflicts of interest that may arise when a member of your institution leaves for the private sector?

No.

1.8. The oath

Do members of your institution have to take an oath?

☒Yes

☐No

If yes, what does this oath consist of and how is it taken?

Is responsibility of the President of the Supreme Administrative Court for the installation of the Supreme Administrative Court' judges and presidents of the Central Administrative Courts (Appeal Courts, 2nd instance courts). According to the Statute of the Judicial Judges, the inauguration must take place in person, at the court where the judge will be performing his/her duties. At the inauguration ceremony, the judge declares: "I solemnly affirm on my honour that I will loyally fulfil the duties entrusted to me and administer justice on behalf of the people, with respect for the Constitution and the law."

II Ethics: Content of rules

2. 1. Independence, impartiality and prevention of conflicts of interest

2.1.1. In which circumstances should a member of your institution abstain from sitting or risk being disqualified from a judgement panel?

☒In cases of familial ties that may link the magistrate with a party

☒In cases of friendly ties that may link the magistrate with a party

☒Due to previous functions performed by the magistrate

☒Other

Please explain, citing any relevant jurisprudential examples

In Portugal, the respect for the principle of impartiality implies that the judge does not intervene in cases in which there's a personal interest, either their own or third parties.
Article 203 of the Constitution of the Portuguese Republic states that courts are independent and subject only to the law. Article 216 establish guarantees and incompatibilities applicable to judges and article 22 refers to the issue of impartiality, regarding the composition of the Constitutional Court stipulating "the judges of the Constitutional Court shall enjoy the guarantees of independence, impartiality, irremovability and shall be subject to the incompatibilities of the judges of the other courts".
In the Code of Civil Procedure[17], applicable *ex vi* article 1 of the Procedure Code of the Administrative Courts, the guarantees of judges' impartiality of judges are established in articles 115 to 129, regarding to impediments and suspicious. So, no judge may exercise when:

- Is a party in the case, either on his/her own behalf or on behalf of another person, or when have any interest in the case that would allow him/her to be a main party;
- His or her spouse or any of his or her relatives, whether in a direct line or in the 2nd degree of the collateral line, or when any of these persons has an interest in the case which allows him/her to appear as the main party;
- Has intervened in the case as a mandatary or expert or when a matter on which he/ she has given an opinion or expressed a view, even orally, has to be decided;
- Has intervened in the case as an attorney of record the spouse or a relative or family member in the direct line or in the 2nd degree of the collateral line;
- If an appeal is lodged in a case in which have acted as a judge of another court, either by giving the decision under appeal or by otherwise taking a position on issues raised in the appeal;
- If it is an appeal against a decision handed down by a relative or family member in the direct line or in the 2nd degree of the collateral line, or against a decision handed down by a relative or family member in these situations;

[17] Approved by Law no. 41/2013, June 26, last amended by Law no. 3/2023, January 16.

- If in a cause there is a person who has brought a civil action against him/her for damages, or has brought criminal charges against him/her, as a result of acts committed in the performance of his/her duties, or when that person's spouse or a relative in the line or in the 2nd degree of the collateral line is a party in the case, and since the action or the charges have already been admitted.
- Has testified or has to testify as a witness;
- A person in the situation referred to in the previous items is living with the judge on a shared economy(household).

If there is no impediment, but serious reasons are raised regarding the impartiality conditions, the judge can ask to be excused or dismissed, or any of the parties can raise a suspicion incident (articles 119 and 120 of the Code for Civil Procedure).

The Statute of the Judicial Judges prohibits judges from exercising "in a section or court of extended territorial jurisdiction in which trial judges, prosecutors or court clerks serve, to whom they are linked by marriage or non-marital union, kindred or affinity or any degree of the straight line or up to the 2nd degree of the collateral line".
It also prevents from "serving in a court belonging to the county in which, in the last five years, they have worked as public prosecutor or which belongs to the county in which, in the same period, they have worked as a lawyer" (cf. article 7).

National Jurisprudence

- Decision by the Central Administrative Court of South of 25.01.2022 states, regarding the excuse incident, according to Article 121, no. 1, item g) of the Code for Civil Procedure, the existence of "serious enmity or great intimacy between the judge and any of the parties or their mandataries" constitutes grounds for suspicion (Case no. 486/19.0BELRA-A) [18].

- Decision by the Central Administrative Court of South of 20.04.2023 states, regarding the judge's excuse incident, that "the principle of the natural judge can only be set aside in limit situations, when other principles or rules, perhaps of greater or equal dignity, such as the judge impartiality and exemption, jeopardise it. Relationships of friendship between judges and lawyers, which often go back to academic or professional life before they entered the judiciary, do not, in themselves, constitute grounds for excusal, since relationships of friendship between the two, by the nature of things, will be inevitable" (Case no. 358/23.3BESNT-A) [19].

2.1.2. If your institution exercises both a jurisdictional function and an advisory function, what individual measures does it implement to comply with the *Procola* case law of the European Court

[18] Available at https://www.dgsi.pt/jtca.nsf/170589492546a7fb802575c3004c6d7d/dc7d6e22857262f2802587d600340a92?OpenDocument

[19] Available at https://www.dgsi.pt/jtca.nsf/170589492546a7fb802575c3004c6d7d/fb29964821ef616080258998002bcb5a?OpenDocument

of Human Rights dated 28 September 1995, according to which the fact that certain members successively exercise, regarding the same decisions, advisory and jurisdictional functions is likely to compromise the structural impartiality of the institution?

☐Prohibition of a member's participation in the judgement of an appeal directed against an act taken after advisory opinion from your institution if they participated in the deliberation of that opinion

☐Prohibition for members of a judgement panel to consult the files of advisory panels

☒Other

Please explain if necessary:

See answer to question 1.3.3.

2.1.3. If your country allows members of your institution to temporarily leave to take up other functions in the public or private sector, what ethical rules govern such a departure and, when the time comes, such a return?

☐Obligation to abstain, before departure, from participating in any deliberation involving a future employer from the moment the individual enters into negotiations with them

☐Prohibition for the members concerned, during this temporary period outside the institution, from intervening in cases they became aware of in the exercise of their jurisdictional activities

☐Prohibition for a member practising as a lawyer from submitting requests and briefs and appearing in court before your institution for a specified period

☐Obligation to abstain, if applicable for a specified period after the return, from participating in the judgement of disputes concerning decisions taken by the authority with which the member previously served

☒Other

Please explain if necessary:

We have no applicable ethical rules. Judges who leave and return to the judiciary are subject to the same rights and obligations legally provided by the Statute of the Judicial Judges, applicable *ex vi* article 7 of the Statute of the Administrative and Tax Courts.

2.1.4. Can a member of your institution receive gifts?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

In line with article 120, no. 1, item f) of the Procedure Civil Code (whose regulations extend to the procedure in administrative and tax courts), the acceptance of gifts/donations before or after the start of the judicial procedure may be a cause of impediment advocated against a judge that has received some sort of contribution.

2.1.5. Can a member of your institution receive an honorary decoration from their country or a foreign country?

☒Yes

☐Yes, under certain conditions

☐No

Please explain if necessary:

2.2. Exercise of individual liberties

2.2.1. Are there limits placed on the freedom of expression and opinion of members of your institution?

☒Yes

☐No

Please explain if necessary:

Considering the Universal Declaration of Human Rights, members of the judiciary have, like other citizens, the right of freedom of expression, belief, association, and assembly, provided that, in its exercise, behave to preserve the dignity of their position and the impartiality and independence of the judiciary. In Portugal, freedom of speech represents an inherent constitutional guarantee and has a universal scope, according to article 37 of the Constitution. For judges, the principle of reservation and confidentiality (article 7-B, Statute of the Judicial Judges), which safeguards dignity and diligence, guide judges conduct during their activities is a natural and necessary limitation to their freedom of speech.

In accordance with article7-B, no. 2, Statute of the Judicial Judges, the duty of confidentiality that befalls on judges is restricted to information part of judicial secrecy and finds specific exceptions that conform to the protection of honor or of other legitimate interest.

2.2.2. In particular, is the use of social media by members of your institution regulated?

☒Yes

☐No

Please explain if necessary:

The judges use of social networks is guided by the principle of moderation, as is the case for the exercise of freedom of speech. The use of social media is a form of expression and therefore finds the same limitations as the right to freedom of expression.
Judges naturally accept that their freedom of expression is limited, and their use of social media must be made with good judgement, and in a discreet, responsible, sensible, prudent, cautious and considered way, in order that there is no jeopardy on their dignity, suitability, integrity, impartiality and independence.

2.2.3. As an example, can a member of your institution participate in a public debate of general scope (for example, on immigration or euthanasia), provided that they do not specifically mention a particular case they may have been involved in judging?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

The limit on freedom of expression applicable to judges is not restricted to the duty of reserve legally laid down in the Statute of the Judicial Judges, preventing them from expressing themselves on a pending case, even if they are not in charge of it, nor can be expected to be. The restriction is related to professional ethics and to the respectability and dignity resulting from their conduct (article 7-B).

In fact, judges' participation on public debate regarding court decisions requires due diligence and moderation that ensures dignity and confidence to the judicial system. This means that, aside from the limitations of professional secrecy and reservations, judges are ethically bounded to safeguarding the integrity of judicial decisions.

2.2.4. Can a member of your institution write and publish an article or a book? Can they teach at a public university or a private educational institution?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

The principle of exclusivity, established by the Constitution of the Portuguese Republic, implies that the judge position is, as a rule, a full-time activity, preventing them from carrying out any other activities, except unpaid teaching or scientific research of legal nature (no. 3, article 216).

Also, the Statute of the Judicial Judges clarifies that there is not any incompatibility with activities such as teaching or scientific research of legal nature (unpaid), as well as to receipt money resulting from literary, artistic, scientific, and technical production and creation, and publications derived from them (article 8-A).

2.2.5. If yes, must they seek prior authorisation from the head of your institution?

☒Yes

☐No

Please clarify if necessary:

In accordance with article 8-A of the Statute of the Judicial Judges, applicable *ex vi* no. 3, article 3 of the Statute of the Administrative and Tax Courts, the exercise of the referred functions requires authorisation from the Superior Council and cannot involve damage to the service in cases such as teaching or scientific research of a legal nature.

2.2.6. Are members of your institution allowed to engage in political activities?

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

To prevent interference from outside forces, judges are not allowed to engage in political activities. This is expressly forbidden under the:

- Statute of the Judicial Judges, with the specific exceptions in article 6-A, no. 2 that include the appointed posts of President of the Republic, member of the Council of

State and representative of the Republic for the autonomous regions - cf. article 6 (political activity prohibition);

- Organic Law of the Constitutional Court[20]- article 28 (political activities prohibition);
- Public Prosecutor Statute[21] – article 108 (political-party activities);
- Law on the Organisation and Procedure of the Court of Auditors[22] - no. 2, article 27 (incompatibilities, impediments and suspicions).

2.2.7. Can members of your institution run for elections?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

Judges in the administrative and tax courts can run for election if they apply for a long-term leave of more than one year and less than 15 years. Within this timeframe, they are not subject to the Statute and may not invoke their status as a judge under any circumstances (item e), article 12 and no. 9, article 14 of the Statute of the Judicial Judges).

2.2.8. If a member of your institution is elected, can they continue to perform their functions in your institution?

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

2.2.9. If a member of your institution is elected, can they, in the event of full-time elective office, rejoin your institution upon the expiration of their mandate?

☒Yes

☐Yes, under certain conditions

☐No

Please explain if necessary:

[20]Cf. Law no. 28/82, November 15, last amended by Organic Law no. 1/2022, January 4.
[21] Approved by Law no. 68/2019, August 8, last amended by Law no. 2/2020, March 31.
[22] Approved by Law no. 98/97, August 26, last amended by Law no. 12/2022, June 27.

2.2.10. Can a member of your institution sign a petition?

☒Yes

☐Yes, under certain conditions

☐No

Please explain if necessary:

The Constitution of the Portuguese Republic acknowledges that all citizens have the right to present, individually or collectively, petitions, representations, claims or complaints to the sovereignty body or to any public authority, in defence of rights, the Constitution, the law or general interest, on any matter provided that the claim is not illegal (article 52).

2.2.11. Can a member of your institution participate in a demonstration?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

The Constitution of the Portuguese Republic acknowledges that all citizens have the right to assemble and take part in public demonstrations. However, this freedom granted to the citizen-judge must be exercised ensuring the trust and dignity required by the position (article 45).

2.2.12. Can a member of your institution invoke a "conscience clause" to refuse to apply the law – for example, by refusing to sanction a doctor who, in violation of the provisions obliging him to do so, failed to inform his patients about the possibility of terminating their pregnancy?

No. Article 41, no. 6 of the Constitution of the Portuguese Republic refers that the right to conscientious objection, understood as the right to refuse to fulfil a legal duty on the grounds that it is incompatible with one's freedom of conscience, religion and worship, is exceptional and only applies in cases expressly provided for by ordinary law.

In turn, the Civil Code[23], article 8, affirms that the court may not abstain from judgement on the grounds that the law is lacking or obscure or on the grounds of insurmountable doubt about the facts in dispute. Moreover, the duty of "law obedience may not be waived on the pretext that the content of the legislative precept is unjust or immoral".

2.3. Case studies

To add substance to our discussion, the organisers of the symposium would like to discuss specific questions that you have encountered and on which your College of Ethics, if you have one, would have pronounced.

See answer to question 1.6.1.

[23] Approved by Decree-Law no. 47 344/66, November 25, last amended by Decree-Law no. 10/2014, August 1.

III. Recruitment of members

3.1. Who can be recruited in your institution?

3.1.1. How many members do you recruit on average each year in your institution?

The Supreme Administrative Court does not, annually, recruit judges. To fill in vacancies – whether to the administrative or tax contentious chamber - the Superior Council decides, depending on the needs.

3.1.2. Are all new members recruited at the same rank, or are the members of your institution divided into several ranks for which different recruitment methods exist? Please explain:

Although the access to the bench of the Supreme Administrative Court (STA) requires either to transfer judges from a different court chamber or a competitive curricular selection process open to judges from the Central Administrative Courts (TCAs), public prosecutors and to other meritorious jurists (articles 61; 65; 66, 1, and 67 of the Statute of the Administrative and Tax Courts), the new members are recruited at the same rank.

3.1.3. Are age conditions set for the recruitment of these new members?

☒Yes

☐No

Please explain if necessary:

According to the Statute of the Judicial Judges, these cease their functions on the day they reach the age of 70 (article 70, no.1, item a)).

3.1.4. Are diploma conditions set for the recruitment of these new members?

☒Yes

☐No

Please explain:

The candidate's grading is based on their relative merit, considering their full curricular assessment following these recruitment requirements/conditions:
a) Previous service ratings;
b) Grades obtained in competitions or courses to judicial positions;
c) University and post-university curriculum;

d) Scientific work;
e) Activity developed in forensic area or legal teaching;
f) Other elements which indicate the applicants suitability.

3.1.5. Is it possible to become a member of your institution directly after completing university studies or, if applicable, after a training college?

☐Yes

☒No

Please explain:

3.1.6. Are conditions of prior professional experience required to become a member of your institution?

☒Yes

☐No

Please explain:

Can apply to become a judge at the Supreme Administrative Court, according to the Statute of the Administrative and Tax Courts, candidates who fulfil the following conditions (cf. article 66):

- Justices, by transference from another court chamber;
- Judges of the Central Administrative Courts with five years' service in these.
- Deputy General-Prosecutors with five years' service in this category, provided they have worked for 10 years in the administrative and tax jurisdiction, on the Advisory Council of the Prosecutor-General's Office or as legal auditors.
- Jurists of recognised merit with at least 20 years of proven professional experience in public law field, namely through public office, law practice, higher education teaching or research, or at the Public Administration service.

3.1.7. Can members of the lower courts become members of your institution?

☐Yes

☒No

Please explain:

In Portugal, considering the court hierarchical structure, there are three judges' categories with the title of (article 58 of the Statute of the Administrative and Tax Courts)

- Justices - serve at the Supreme Administrative Court (the umbrella body of the administrative and fiscal jurisdiction);
- Appeal judges – serve at the Central Administrative Courts, North and South (Appeal Courts, 2nd instance courts);
- Trial judges – serve at the Administrative and Tax Courts (1st instance courts).

To be a judge at the Supreme Administrative Court, can apply to the competition judges from another court chamber (through transference) and judges from the Central Administrative Courts with five years' service in these. (articles 65 and 66 of the Statute).

If yes, what is their proportion in the number of new members?

See answer to question 3.1.7.

3.1.8. How old is the youngest of your colleagues?

At the Supreme administrative contentious chamber, the youngest judge in office is 51 years old. At the tax litigation chamber, the youngest judge in office is 48 years old.

3.1.9. Are the members of your institution recruited without a time limit - that is, for a career that will end with retirement - or for a fixed-term contract?

The judges' provision to permanent posts is not subject to a time limit, i.e. the judge will remain in the same post until the end of their career or category (article 43 of the Statute of the Judicial Judges), unless is applied a disciplinary penalty transfer, under the terms of item c), no.1, article 85 and article 88 of the same Statute.

3.2. How does the recruitment procedure work in your institution?

3.2.1. Does the executive branch intervene in the recruitment procedure for members of your institution?

☐Yes

☒No

Please explain:

The principle of the separation of powers is itself a guarantee of judicial independence (articles 2 and 111 of the Portuguese Constitution.
The judiciary is independent in the execution of its constitutional role in relation to other powers of the state. These powers are complementary, no power is "supreme" or dominating the others.

In accordance with the principle of separation of powers judges are recruited on merit, whether to access the career or promotion, with requirements and rules clearly reflecting in the Statute of the Administrative and Tax Courts, and without political interference.

3.2.2. Does the recruitment procedure for members of your institution involve an individual interview?

☒Yes

☐No

3.2.3. If yes, is this interview an opportunity to assess the candidate's motivation as well as their legal knowledge?

☒Yes

☐No

3.2.4. Does the recruitment procedure vary depending on the rank the candidate is applying for - in the event that recruitments in your institution may be made at different ranks (cf. above 3.1)?

☐Yes

☒No

Please explain if necessary:

Under the terms of the Statute of the Administrative and Tax Courts, the Supreme Administrative Court works in chambers, one for administrative litigation (1st Chamber) and the other for tax litigation (2nd Chamber), and in full bench (article 23). The recruitment process for filling vacancies is, with the necessary adaptations, similar. In this regard, see Notice no. 2696/2022, which opened curricular vacancies to fill in the existing vacancies for the tax litigation section[24] and Notice no. 2695/2022, which opened curricular vacancies to fill in vacancies for the administrative litigation section[25].

3.3. What is the procedure for appointing members of your institution?

3.3.1. The appointment of members of your institution results from a decision:

☐by the executive branch (for example, a presidential decree)

[24] Available at https://diariodarepublica.pt/dr/detalhe/aviso/2696-2022-178882473
[25] Available at https://diariodarepublica.pt/dr/detalhe/aviso/2695-2022-178882472

☐by the judicial branch (by the president of your institution or a panel of independent judges)

☒other

Please explain if necessary:

According to the Statute of the Administrative and Tax Courts, the appointment, placement, transfer, and promotion of the administrative and tax courts judges is responsibility of the Superior Council, which is a collegial body with: two members appointed by the President of the Republic, four members elected by the Parliament and four judges elected by their peers (article 75).

3.3.2. Can the appointment of members of your institution be challenged in court?

☒Yes, through an action at the time of the appointment of said members

☐Yes, as an exception regarding the regularity of the composition of the members of the judgement panel

☐No

If yes, before which judge?

Any candidate who feels unfairly overlooked in the competition can file an administrative action at the administrative or tax contentious chamber of the Supreme Administrative Court. In turn, the Superior Council cited in the administrative action submits, under the terms of article 83 of the Procedure Code of the Administrative Courts[26], the appropriate plea and the case follows its regular procedure.

3.3.3. If your institution is competent to hear this litigation, how does it ensure respect for the right to a fair trial?

Respect for the principles of the rule of law and for a fair and equitable judgement establish that those involved in the recruitment process – the competition jury (responsible for each candidate performance report) or the Superior Council for the Administrative and Tax Courts (responsible for the approval of the admitted candidates final listing) - are not part of the judges panel (responsible for judging the case).

[26] Approved by Decree-Law no. 4/2015, January 7, last amended by Decree-Law no. 11/2023, February 10.