



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

## Judges' President competences: transfer of cases, reallocation of judges

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# JUDICIAL REFORM IN PORTUGAL

Judicial High Council / Court's President  
(Competences)

Assignment of cases / Transfer of cases / Posting of Judges

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## I. Assignment / Reassignment of cases

## Assignment of cases

### Assignment: initial allocation of cases

- ➔ When a file is lodged with the court it is **classified** according to its matter and complexity.
- ➔ Cases are **randomly** assigned to each Judge by means of an **electronic tool** to prevent **interference** and enhances **transparency**.

## Assignment of cases

### Assignment: initial allocation of cases

- ➔ The legal provisions on the assignment of cases are directly linked with the need to ensure **impartiality** and **independence**.
- ➔ Every case shall be conducted and decided by a Judge according to pre-established **objective criteria**.
- ➔ In criminal cases applies the **principle of the natural judge** (meaning that every citizen has the right to have his case dealt with by a court defined according to rules pre-established by law without the possibility of removing the Judge).

## Reassignment of cases

### **Reassignment: subsequent reallocation of cases**

After the initial assignment of cases a reassignment may occur by the following reasons:

- **Reasons affecting the handling of the cases** like illness of the Judge or increase in the workload
  - In this cases the Judicial Hight Council shall decide on the reassignment.
  - It may delegate its competence (Appeal Courts).
  - The reassignment is random.

## Reassignment of cases

### Reassignment: subsequent reallocation of cases

#### ➤ Reorganization of the Courts

- In this case the Parliament decides by law on the general reassignment of cases as a result of the legislative changes on the organization of the Courts.
- But the reassignment rules are established by the Judicial High Council.



## II. Transfer of cases



**Transfer of cases**

The **transfer of cases** is temporary and consists on the following conditions:

➤ **SUBSTITUTION**

**A judge handles some cases** in the absence of the one to whom the cases have been assigned



The aim is to ensure the handling of cases in the absence of the initial judge



The **President** decides the **substitution** of the initial judge in his absence

➤ **SUBSTITUTION (Cont.)**

The Judicial High Council established general criteria that must be applied by the president:

- ✓ **Geographical** proximity;
- ✓ **Specialization** of Judges;
- ✓ **Equality** of workload and application to **all** judges;
- ✓ **Previous consultation** with the judges involved.

Transfer of cases

➤ **REALLOCATION**

**Cases are allocated to a Judge regardless their initial assignment**



The aim is to to increase the efficiency and productivity of the court



The **Judicial High Council** decides the **reallocation** of cases after president's proposal

➤ **REALLOCATION (Cont.)**

The Judicial High Council has established binding principles to be applied (by Council and by Presidents):

- ✓ **General** and **abstract** criteria to determine the cases;
- ✓ **Specialization** (of Judges);
- ✓ **Exceptionality**;
- ✓ **Subsidiarity**;
- ✓ **Publicity**.

Transfer of cases

➤ **REALLOCATION (Cont.)**

The **consent** of the concerned Judges is not needed by law.



**However, the Judicial High Council established that:**

The consent of the concerned Judge may be dispensed only when judge's workload/backlog is below a certain limit



**The Government had presented to the Parliament a proposal to change this rule so that the consent would be mandatory**

### III. Posting of Judges



## IRREMOVABILITY

**Irremovability** of Judges is a main principle in Portuguese Constitution

### Meaning:

- ➔ Judges are appointed for life
- ➔ Judges can not be transferred, suspended, retired, dismissed or by any means moved

Unless it is specifically foreseen in their Statute



**The Judicial High Council has exclusive competence to appoint and transfer Judges**



## Posting of judges

**Exceptionally a Judge may be posted temporarily in a different section or Court** (with or without interruption of his work in his previous post).



**It aims at overcoming workload/backlog imbalances and enhance efficiency.**

The President of the Court **proposes** and the Judicial High Council **decides**.



**Limit of the measure**  
Judge's specialization.

**Posting of judges**

**The consent of the concerned Judges is not needed by law**



**This issue was raised before the Constitutional Court**



**The Government had presented to the Parliament a proposal to change this rule so that the consent would be mandatory**

## Posting of judges

The Judicial High Council established additional rules for the posting of Judges in a different section/court

### General rules:

- **Previous consultation** with the concerned Judge
- **Subsidiarity** of the measure
- **Consent** of the concerned Judge

## Posting of judges

Exceptionally:

The consent may be **dispensed** when

the **workload/backlog** in the original section is below a certain limit and the **workload/backlog** in the new section is above a certain limit

And

There is **no prejudice** to the family and private life of the Judge concerned



**However the Council considers the consent mandatory when the same Judge has previously been posted without consent**

## V. Conclusions



## Conclusions

- ➔ As a **general rule** the assignment and reassignment of cases is
  - ❑ random
  - ❑ by electronic system
- ➔ As a **general rule** Judges can not be moved from the Court/section to which they were appointed

## Conclusions

**However  
in very limited and clearly defined cases**

To enhance efficiency, overcome workload imbalances or ensure the handling of cases

- Either the **Judicial High Council or the President of the Court**, depending on the situations, may decide the **transfer of cases**
- The **Judicial High Council** may also decide the **posting of Judges**

## Conclusions

### In those cases

- ✓ Measures affecting the random assignment of cases are **exceptional** based on **abstract, general, binding and pre-established criteria**
- ✓ Measures of posting of Judges are **exceptional** and of Council's **exclusive competence**
- ✓ Both are **public and publically available**.



**Thank you so much for  
your attention**

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