

Contribution of the Portuguese Ombudsman to the
Questionnaire of the Special Rapporteur on the independence of judges and lawyers
January 2018

The Portuguese Constitution establishes the Supreme Judicial Council (article 218) as the independent body with the competences of appointing, assigning, transferring and promoting judges, as well as exercising the disciplinary powers (including suspension and removal of judges). Its competences are further developed by several ordinary laws, namely the Law of organization of the judicial system (Law No. 40-A/2016, 22 of December), the Statute of Judges (Law No. 21/85, 30 of July) and the Law on the organization and functioning of the Supreme Judicial Council (Lei No. 36/2007, 14 of August).

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The Council is composed by a total of seventeen members. Seven are elected by the Parliament, seven magistrates are elected by their peers and two members appointed by the President of the Republic. The President of the Supreme Court of Justice is also a Member of the Council and is inherently the President of this body. All the members of the Supreme Judicial Council have the same guarantees enjoyed by judges.

The election, by the Parliament, of seven members of the Council, requires a qualified majority of two thirds of the Members of Parliament - article 163 h) of the Constitution – preceded by a hearing before the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees (Article 257.º of the Parliament’s Internal Regulation).

Concerning the seven members of the Council elected by judges the procedure establishes that a minimum of 20 judges can present a candidates list to the elections comprising one judge of the Supreme Court, two judges of the Appeals Courts and four judges from the first instance courts, representing each one of the judicial districts (article 137, paragraph 1 c) and article 141, paragraphs 1 and 2 of the Statute of Judges).

The President of the Republic freely appoints two members of the Council.

Vis-à-vis the duration of the mandates, the President of the Council serves a 5 year term (coinciding with the term as President of the Supreme Court of Justice); the members elected by the Parliament serve a term of four years, the members elected by the judges serve a three year term; the members nominated by the President of the Republic serve a 5 year term.

The Council has a permanent staff of 113 people that work exclusively for this constitutional body. Regarding the number of judges placed in courts of law, Portugal has 2437 judges exercising their functions in 1st instance courts, Appeal Courts and the Supreme Court.

For 2018, the Council has a total budget of €149 603 487,00 which includes provisions regarding the functioning of the Council itself and the expenditure in wages of the 2437 judges placed in all the courts.

Admission to initial training for judges and public prosecutors is made by open competition, which is published in the Official Journal (*Diário da República*) and includes various methods of selection.

The goal of the open competition is to fill positions in the judiciary and the Public Prosecution Service or to fill vacancies in Administrative and Tax Courts.

To be eligible for the open competition the candidate must:

- Be a Portuguese citizen or a citizen of a Portuguese-speaking country with permanent residence in Portugal who, by law and under conditions of reciprocity, is entitled to perform the duties of a judge or public prosecutor;

- Have a law degree

- Satisfy the general requirements for entry into public service.

Furthermore, there are two other ways of qualifying for the competition and the initial training:

- Admission based on academic merit

- Admission based on professional experience

In order to be able to apply for admission based on academic merit the applicant must have a master's degree or a PhD.

In order to apply for admission based on professional experience the applicant must also have court experience or experience in interrelated areas which are relevant to the performance of the duties of a judge or public prosecutor, for at least five years.

The selection methods are the following:

- Aptitude tests consisting of written and oral exams (the applicant must be successful in all the exams);

-Assessment based on the applicant's curriculum for those seeking admission based on professional experience, which can also eliminate the applicant from the competition and which includes:

-a) Discussion of the applicant's curriculum and professional experience;

-b) Debate of legal topics related to the candidate's experience;

- Psychological tests.

In order to be considered, applicants must receive a "favorable" classification on the psychological test.

The Centre for Judicial Studies is the institution responsible for the initial and ongoing training of judges and public prosecutors. Created in 1979, the Centre integrates the Ministry of Justice, but has administrative autonomy. The Centre plans its activities in consultation with the Supreme Judicial Council, the Supreme Council for the Prosecution Service, providing specialized training initiatives whenever requested by these various entities.

According to the Constitution and the Statute of Judges, the Council is the only State body with the competence for the appointment, placement, transfer and promotion of the judges of the judicial courts and the exercise of disciplinary action.

Judges are placed (in their first court) accordingly with their classification in the initial training course and internship (article 42 of the Statute).

Article 216.º of the Portuguese Constitution establishes that judges are irremovable and cannot be transferred, suspended, retired or dismissed except in cases laid down by the law. In the case of transfer of judges, that can only occur by the own initiative of the judge or following a disciplinary proceeding before the Council with the guarantees enshrined in the law. The same article determines that Judges cannot be held responsible for their decisions, except in the situations provided by the law.

In respect to the promotion of judges, the access to the Appeal Courts and to the Supreme Court is made via merit based competitions. The filling of vacancies in the Appeal Courts is made by means of a curricular competition, with prevalence of the criterion of the merit between judges of the first instance courts (Article 46 and 47 of the Statute). The access to the Supreme Court is done through a curricular competition open to judges, public prosecutors and other jurists of merit (article 50 and 51 of the Statute).

As mentioned above, the Council has the exclusive competence to exercise the disciplinary powers. The disciplinary procedure is enshrined in the Statute of

Judges, which establishes a wide range of rights and guarantees typical of the rule of law (articles 110 - 124 of the Statute).