

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

Ana Azeredo Coelho

Judge at the Court of Appeal
Chief of the Vice President's Office
CSM Portugal

JUDICIAL REFORM IN PORTUGAL

Judicial High Council / Court's President (Competences)

Assignment of cases / Transfer of cases / Posting of Judges

MADRID
29 November 2016

Ana de Azeredo Coelho

Judicial High Council – Portugal

Table of contents

- I. Assignment / Reassignment of cases
- II. Transfer of cases
- **III. Posting of Judges**
- **IV. Conclusions**

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 <u>matter</u> and <u>complexity</u>.
- Cases are **randomly** assigned to each Judge by means of an **eletronic 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 assignement of cases a reassignement may occur by the following reasons:

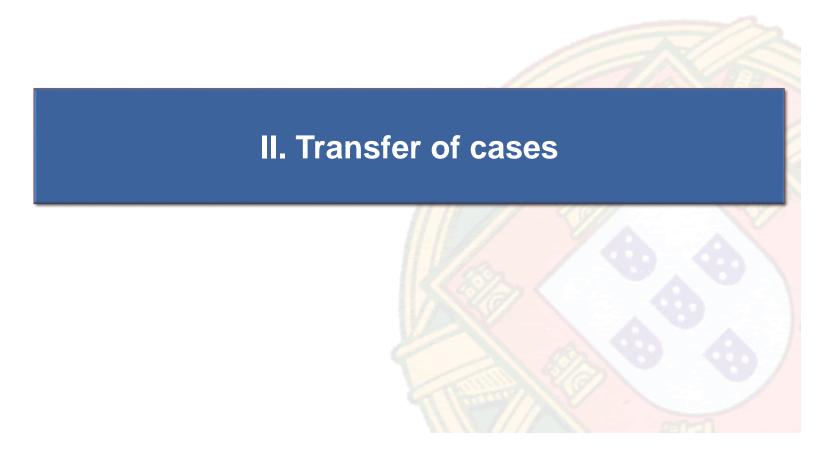
- Reasons affecting the handling of the cases like ilness of the Judge or increase in the workload
 - In this cases the Judicial Hight Council shall decide on the reassignment.
 - It may delegate its competence (Appeal Courts).
 - The reassignment is random.

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.



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 aplication to all judges;
- ✓ Previous consultation with the judges involved.

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.

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 bellow a certain limit



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



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

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.

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

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

Exceptionally:

The consent may be **dispensed** when

the **workload/backlog** in the original section is bellow 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



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
- ✓ Mesures of posting of Judges are **exceptional** and of Council's **exclusive competence**
- ✓ Both are public and publicaly available.

Thank you so much for your attention