

# **THE JUDGE BEHIND THE CURTAIN OF JUSTICE**



**THE NEW PORTUGUESE DECLARATION OF INCOME,  
ASSETS AND INTERESTS**



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**Judicial Ethics and Professional Conduct  
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# THE JUDGE: BEHIND THE CURTAIN OF JUSTICE

## THE NEW PORTUGUESE DECLARATION OF INCOME, ASSETS AND INTERESTS

### 1. Description of the legal regime of the Declaration of income, assets and interests

The law n.º 52/2019, July 31 approved the legal regime for those who are holders of political offices and senior public positions, implementing declaratory obligations and sanctioning regimes.<sup>1</sup>

Concerning to magistrates and other judicial positions, its articles 4 and 5 define those to whom the subjection to the reporting obligations are applicable. According to article 4, we can find the judges of the Constitutional Court, the judges of the Court of Auditors, the Attorney General, the Ombudsman, the members of the Superior Councils of the Judiciary and of the Prosecution Service and the Superior Council of the Administrative and Tax Courts. The article 5 extends the obligation in general to judges and prosecutors under the terms of their professional statutes.<sup>2</sup> Lastly, an aspect concerning to article 4 and the members of the different High Councils: considering their composition, it applies to those who are not magistrates, since article 5 applies to those who are.

Thus, that recent law establishes a set of declarative obligations. It consists on a submission of a declaration of income, assets, interests, incompatibilities and impediments, as well as the logistics associated with it, such as updating, free access and publicity. In addition, the law also provides for the obligation to declare interests and

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1 Meanwhile the law 52/2019 was amended by the Law 69/2020 of November 9. Along the paper all the references to law 52/2019 consider the version in force.

2 The Statute of Judicial Magistrates approved by law 21/85 of July 30, was recently amended, by law 67/2019 of August 27 which introduced, on article 7.ºE, an obligation of declaration to judges. The same discipline is stipulated in the Statute of Public Prosecutors, entered in force by the Law 68/2019, of August 27.

institutional and hospitality gifts, as also the creation of codes of conduct. Regarding to magistrates, the Superior Councils of the Judiciary, of the Administrative and Taxation Courts and of the Public Prosecutor's Office are responsible for complying these legal requirements.

Within the scope of this paper and its relation to judicial ethics and professional conduct, we will approach just those regulations related to judges and prosecutors. In fact, among the obligations mentioned above, the declarative obligation is the one that raises utmost importance, because it restricts fundamental rights safeguarded by the Constitution of the Portuguese Republic and by international and European legal instruments, as we will mention later in this paper.

The analysis of the declaration and its form shows it is even more extensive than the one used for income tax purposes. It must include the full extension of gross income and its source, and it also requires the inclusion of income that is not subject to declaration for income tax purposes, identifying to which category the income would belong if it were taxed. The obligation has a wide-ranging scope and also requires a description of the assets held by magistrates or co-owners, as well as those owned, held, managed, lent or leased by the magistrates themselves or through a natural or legal person, in Portugal or abroad.

In addition to income and real estate, all type of assets must be identified, such as the ownership of participations, shares, rights over boats, aircraft or motor vehicles, securities portfolios, term bank accounts, equivalent financial investments that exceed 50 minimum wages, current bank accounts and credit rights.<sup>3</sup>

Also liabilities must be named, such as the amounts owed to the State or any person or legal entity, national or foreign, including credit institutions. Here is revealed part of the most importance of this topic, just because the declaration will now confront a Magistrate and his fundamental right to privacy with the public in general, who will

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3 According to Decree-Law 109-A/2020, of December 31, the minimum wage in Portugal for 2021 corresponds to 665,00 Euros.

know and have access to data such as the amount of his debts and the name of his creditors. Therefore, on the basis of the concept is the controversial idea of the existence of a public interest on this Magistrate's information.

The declaration must also include a description of the acts and activities that are likely to generate incompatibilities and impediments, as defined in the Professional Statutes of magistrates.

Lastly, on the declaration the magistrates must indicate the positions, functions and public and/or private activities hold in Portugal or abroad, including in companies, foundations or associations, up to three years prior to entering the service as a judge or a prosecutor. In addition they have to register relevant financial interests, which includes the identification of the acts that directly or indirectly generate payments, namely to collective public persons, and the same discipline applies to participation in advisory boards, supervisory committees or other collegial bodies when provided by law, or in the exercise of supervision and control of public funds.

Also in order to comply with the declarative income obligation it must be mentioned if there are any companies in which the magistrate or a relative, either spouse or non-marital partnership, hold shares, what is extended to subsidies or any financial support received by himself, by the spouse who is not legally separated, or by the person with whom lives in a non-marital partnership.

The declaration shall detail whether the Magistrates give lectures, talks, short training courses and other activities of the same nature, whether they participate in commissions or working groups for which they receive remuneration, or in non-profit entities that receive public funds, as well as in professional or interest representation associations.

The entities competent to receive, analyze, make available, supervise and, if necessary, apply the appropriate disciplinary sanctions for non-compliance with this obligation by judicial magistrates, administrative and tax courts and public prosecutors are the respective professional councils.

Concerning to publicity of these declarations, that matter will be explored on chapter 3.

Finally, subsequent declarations must be submitted five years after the last submission. But they must always be updated if there is an effective asset change that alters the declared value of any of the elements mentioned in an amount greater than 50 minimum monthly wages, or if acts or activities meanwhile occurred are likely to generate incompatibilities or impediments under the terms previously mentioned.

## **2. *Ratio* and ethical basis immanent to the prediction of that obligation**

In view of the Portuguese Constitution, “the courts are the entities that exercise sovereignty with the competence to administer justice in the name of the people” (article 202).

The judge must not forget that his function is at the service of the citizens and must be exercised by the most transparent, impartial and independent manner. However, when it comes to impartiality and independence, these are qualities that it is not enough to have, but they must be evident.

Thus, we recall, the confidence of citizens in procedural justice is a necessary condition to trust and respect the procedural options and decisions made in the case.

Judicial operators must convey the perception of incorruptibility and honesty, and this cannot be undermined by suspicion; the tarnish on the judge's image is a blot on the judicial system and in the rule of law.

## **3. Comparison of this obligation with magistrates' fundamental rights**

As already described, judges and prosecutors in Portugal have now this new obligation. However, it seems that this can interfere with magistrates' fundamental rights. Let's see in which way this can or cannot happen.

The Constitution of the Portuguese Republic defines on article 26 (1) that “Everyone is accorded the rights to personal identity, to the development of personality, to civil capacity, to citizenship, to a good name and reputation, to their image, to speak out, to protect the privacy of their personal and family life, and to legal protection against any form of discrimination”. Especially concerning to privacy, this fundamental right arises from the idea of the dignity of the human person and it means, on one hand, that

no one can access other person personal and familiar data and, on the other hand, that people that have access to this confidential information, for professional reasons, for instance, must keep it and don't provide this data to anyone else or disseminate this confidential information.

With the same purpose, the Portuguese Civil Code establishes in article 80 (1) that everybody must reserve about other people personal and private life. And article 64 of the Portuguese General Taxation Law, especially concerning to taxes, determines the obligation for any manager, official or servant of Tax Administration to keep safe the taxpayers' data, unless the taxpayer himself consents on the dissemination of information.

This fundamental right is also regulated in international instruments: Universal Declaration of Human Rights, article 12: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks"; International Covenant on Civil and Political Rights, article 17 (1). No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks"; European Convention on Human Rights, article 8. - Right to respect for private and family life: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". In Portugal, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), was implemented by the Law 58/2019, of August 8.

However, as already explained, the existence of the obligation is justified by reasons of public interest and transparency. Anyway, it represents a restriction to the magistrates' fundamental right to privacy.

Firstly is important to expose in which way article 17 of Law number 52/2019, July 31 establishes the terms of publicity of this personal data.

The main principle is that these declarations are public; nevertheless, there are some elements that are not, such as the address, the civil identification number, the Taxation identity number, telephone number, e-mail, as well as professional activities related to professional secrecy and data that allows one to identify magistrates' personal residence or vehicles. Also, about magistrates' income and assets, there are some restrictions and specific features; for instance, in joint income, which is not only from the judge or prosecutor himself, only shall be revealed the magistrates' part; about shares shall only be public the amount and the company's name; concerning to bank accounts, only the whole value and not the movements of funds shall be accessed; about liability, there are some limits too.

After these declarations being submitted, the parts that can be accessed will be published only on the responsible entity's *website* (and not on another *website* or social network) and one can read it, without having a copy for him or herself, since he or she presents a justified requirement, with his or her own personal identification. That requirement shall be recorded. The whole process must be verified by the responsible entity. Breaches of these rules assign the magistrate the right to object to the access of personal data; this conflict of interests must be decided by the same entity, and appealed to the Constitutional Court. The same will happen if the magistrate invokes specific and valid grounds for prevent the general access.

Last but not least, there are civil and penal consequences for the non-compliance with the rules of the General Data Protection Regulation and with articles 192. and 193. of Portuguese Penal Code – article 17 (11 and 12).<sup>4</sup>

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4 In Portugal, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), was implemented by the Law 58/2019, of August 8, which prescribes the set of sanctions applicable to those who

In spite of all these cautions, the truth is that there is a fundamental right involved. According to article 18 of the Constitution of the Portuguese Republic: “1. The constitutional precepts with regard to rights, freedoms and guarantees are directly applicable to and binding on public and private entities. 2. The law may only restrict rights, freedoms and guarantees in cases expressly provided for in the Constitution, and such restrictions must be limited to those needed to safeguard other constitutionally protected rights and interests. 3. Laws that restrict rights, freedoms and guarantees must have a general and abstract nature and may not have a retroactive effect or reduce the extent or scope of the essential content of the constitutional precepts”.

Concerning to the right to privacy, the article 26 (2) of the Constitution of the Portuguese Republic also prescribes that “The law shall lay down effective guarantees against the improper procurement and misuse of information concerning persons and families and its procurement or use contrary to human dignity”. Therefore, the restriction to this fundamental right must be done in a proportional way, balancing the public interest underlying it and the magistrates’ right to privacy. Under this principle, the restriction must be limited to what is necessary to achieve the protection of public interest. In conclusion, there are three major elements of this principle: adequacy, necessity, and proportionality *stricto sensu*.

About this restriction, since being a magistrate is a professional career, this means a permanent obligation, contrary to political positions, that are temporary.

The Professional Association of Portuguese Judges presented a specific opinion about the Rules of Procedure concerning to this obligation to judges; in its opinion, the judges’ declarations mustn’t be subject to the same general procedure of publicity regulated in the Law number 52/2019, July 31, attending that to this professional group this is a permanent obligation, but should be more adapted. The Association concluded that this result in the violation of magistrates’ privacy right, once it doesn’t comply with the proportionality principle and is unnecessary for the judge to present this declaration every five years and during all career.

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violates the protection data duties. Also the Penal Code has force with its articles 192 and 193, which prescribes crimes as privacy intrusion, including by computer.



Another fundamental right that can be violated is the fundamental right to personal integrity and to security – articles 25 and 27 of Constitution of the Portuguese Republic, article 5 of European Convention on Human Rights and article 17 (1/c) of the Statute of Judicial Magistrates.

And that's because, in spite of the restrictions mentioned above, the fact is that the publication of personal data will allow anyone to easily have access to magistrates' husband or wife identity, the localization of his or her house and the identification of the vehicles, for instance.

It is important to remind that judges' decisions are individual and affect directly people's life, which means a major possibility of someone attempt to retaliate, blackmail or take revenge on the judge. In consequence, also seems that the publicity of this personal data violates, in a non-proportional way, magistrates' fundamental right to personal integrity and to security.

Moreover, the Consultative Council of European Judges had already warned of the risk associated with the publicity of judges' personal data, and recommended that each country must attend to its own background and to adapt its system to the needs and to prevent the violation of judges' fundamental rights.<sup>5</sup>

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5 As it is written on the Opinion no. 21 of the Consultative Council of European Judges (CCJE) (2018) - PREVENTING CORRUPTION AMONG JUDGES, 'However, in view of a judge's right to privacy and the right to privacy of his/her family members, the implementation of such a system should always be strictly in line with the principle of proportionality. The first element of the latter is the question of necessity. In the many member States where corruption has not been an issue, or at the least very little in the way of actual corruption, it does not seem necessary to implement a general system of asset declarations. In such countries, it might even be detrimental to the quality of the judiciary to introduce an obligation of systematic asset declaration. Other suitable candidates for a judge's post might refrain from applying because they see such a far-reaching obligation as an unjustified intrusion into their private lives. In addition, the CCJE is of the view that even in countries where a system of asset declaration exists, due attention should always be given to the proportionality of the

#### **4. Comparison of this obligation with the same duty to members of other sovereign and administrative bodies**

The obligation under review doesn't exist only for judges and prosecutors. Articles 1 to 4 of Law number 52/2019, July 31 establishes the same duty to members of other sovereign and administrative bodies.

The political positions included are the following: the President of the Republic, the President of the Portuguese Parliament, the Prime-Minister, the Members of the Parliament, the Government members, the Representatives of the Republic of Portuguese autonomous regions (Madeira and Azores), the members of the Government of these same regions, the Portuguese Members of the European Parliament, the members of local governing bodies and the members of metropolitan areas and intermunicipal systems governing bodies (with a few exclusions). There are some other positions comparable to those.

Behind the mentioned, this is also extensive to a several high state positions, listed in article 3, such as Members of the Board in public companies and entities named by the Government, as also Political Members of Cabinets in general. And, of course, to the judges and prosecutors of the several courts and members of the Superior Magistrates Council, according to articles 4 and 5 of the same law.

An important difference must be enhanced; in Portugal, while the majority of members of the political positions are elected by universal suffrage, the magistrates are chosen through a public tender procedure. However, the magistrates also have the duty to act according to the function and the principles and transparency demanded.

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details of the respective regulation. Disclosure to stakeholders outside the judiciary should only be done on demand, and only if a legitimate interest is credibly shown. Confidential information should never be divulged and the privacy of third parties such as family member should be protected even more strongly than that of the judges'.

Besides, as mentioned before, magistrates have this obligation in a more permanent way, during all career, while political positions are temporary, which represents the most important difference between the two situations.

In addition, it is relevant that judges and prosecutors Statutes establishes other obligations which aim to ensure impartiality, integrity and independence, such as those that concerns to incompatibilities and prohibition to work on other rewarded activities.

Concerning to the declaration itself, the general rules applies to everyone mentioned above. However, article 5 of Law number 52/2019, July 31 establishes that the obligation to magistrates is conditioned by legal provisions established in their professional Statute.

Also, incompatibilities or impediments, as well as the prohibition of maintaining other rewarded services are regulated in magistrates' own professional Statute.

Moreover, the declaration that magistrates fill (regulated by the respective Rules of Procedure) is a bit more exhaustive than the model approved by Law number 52/2019, July 31, what doesn't make much sense in our opinion.

On the specific opinion about the Rules of Procedure presented by the Professional Association of Portuguese Judges, the Association understood that the regulation applied to judges in this matter must be much more adjusted to this position features and professional statute.

## **5. Brief comparative analysis with the legal regime in force in the CJEU and in other European countries**

Regarding to the Court of Justice of the European Union and its Members, both of the Court of Justice and the General Court, the applicable rules and their status derive from the Statute of the Court of Justice of the European Union,<sup>6</sup> its Rules of Procedure<sup>7</sup>

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6 Provided in Protocol No 3 oh the Statute of the Court of Justice of the European Union of the Treaty on the Functioning of the European Union.

7 According to the Rules of Procedure of the Court of Justice of 25 September 2012, as amended on 18 June 2013, on 9 April 2019 and on 26 November 2019.

and, above all and for what is most relevant, from the adoption of the Code of Conduct for Members and former Members of the Court of Justice of the European Union.<sup>8</sup>

This Code of Conduct enshrines a number of applicable principles and the obligation to submit a "declaration of financial interests" in Article 5. However, this declaration is much narrower in scope than the new Portuguese periodic declarative obligation. First, it is different because it only occurs at the time members take office. Secondly, article 5 of the Code of Conduct differs from the Portuguese Magistrates' Statute regarding to the scope of the declaration, since the declaration only concerns the disclosure of facts and entities in which the member of the Court has a direct financial interest which, due to its importance, is likely to give rise to a conflict of interest if the member were called upon to participate in the trial of a case involving such an entity.

The model declaration is annexed to the Code of Conduct and in it the member of the Court identifies each entity in which has a financial interest, but excluding from this scope entities in which the member holds shares that are subject to discretionary management by third parties.

Another comparative model is the new European Public Prosecutor's Office, in office since the current 2021.

The model of the European Public Prosecutor's Office in operation is enshrined in Council Regulation EU 2017/1939 of 12 October 2017, which implements enhanced cooperation for the establishment of the European Public Prosecutor's Office. Regarding to its structure, there is a College of European Public Prosecutors, headed by the European Public Prosecutor, who is assisted in the performance of his duties by Deputy European Public Prosecutors appointed at the level of the Member States enrolled in the network.

Article 96 of the Regulation establishing the European Public Prosecutor's Office provides that the Staff Regulations of Officials and the Conditions of Employment of Other Servants and the rules adopted jointly by the institutions of the Union shall apply to the European Public Prosecutor, the European Public Prosecutors, the Deputy European Public Prosecutors, the Administrative Director and the staff of the European Public Prosecutor's Office. These Staff Regulations are derived from Regulation No 31

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<sup>8</sup> Published in 23.12.2016 on the Official Journal of the European Union.

(EEC), No 11 (EAEC) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, in which no reporting obligations are enshrined as obligations of officials.

On the other hand, Article 96, 6 states that Deputy European Public Prosecutors are engaged as special advisers in accordance with the provisions of Articles 5, 123 and 124 of the Conditions of Employment of Other Servants.<sup>9</sup> As far as these are related, in addition:

- DECISION 001/2020 of the College of the European Public Prosecutor's Office of 29 September 2020 laying down rules on the conditions of employment of Deputy European Public Prosecutors provides in paragraph 5, for what concerns us here, for the duty of the Deputy European Public Prosecutor to submit, no later than two months after entering into office, a declaration of interests including (a) previous professional activities in the last five years; (b) any voluntary activity that could give rise to a conflict of interest; (c) the professional activity of the spouse, civil partner or unmarried partner.

- DECISION 003/2020 of the College of the European Public Prosecutor's Office, which approved in October, 13 2020 the Rules of Procedure of the European Public Prosecutor's Office, adds nothing of significance.

In conclusion, it should be noted that the European Public Prosecutor's Office also fails to indicate any obligation to declare income and assets of the type in force in Portugal.

Also when one evaluates the regimes established by some legal systems in particular, the same characteristic is found: one of the obligations imposed to judicial magistrates is to submit a declaration, but a simple declaration of interests which does not

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9 Enshrined in the Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission.

go so far as to encompass the public disclosure of existing income and assets renewable every five years.

This is the case in France, where Article 7-2 of Ordonnance n° 58-1270 of 22 December 1958 on the Statute of the Judiciary requires that, within two months of taking up their duties, magistrates must submit an "exhaustive, accurate and sincere declaration of their interests", and along with it, an "exhaustive, accurate and sincere" statement of their assets, detailing their real estate, personal property, bank accounts and savings products, valuable movable property, transport vehicles, property held abroad, financial liabilities and debts (article 7-3).<sup>10</sup>

But unlike in Portugal, the declaration of property interests of French judges is only changed in case of a "substantial" change in their situation, not by a legal obligation of a renewable term, and their access is protected from the general public.

A similar scenario exists on the Spanish laws. In this country, Organic Law 4/2018, of December 28<sup>11</sup>, which reformed Organic Law 6/1985, of July 1, on Judicial Power, provides in article 326 that the Presidents of the Audiencias, of the Superior Courts of Justice and of the Audiencia Nacional and the Presidents of Hall and Magistrates of the Supreme Court are subject to the obligation of submission a declaration of property, rights and financial assets they hold under the terms provided for in articles 17 and 18 of Ley 3/2015, of March 30.<sup>12</sup> This law, which regulates the exercise of the President, Members and Secretary General of the General Council of the Spanish Judiciary, provides that the declarative obligation is fulfilled by submitting the annual statement of income, but only for the year in which they begin in office and the year in which they cease their functions.

In comparison with what is now happening in Portugal, a clear difference can be noted: the Spanish declaratory obligation covers only senior magistrates and only during

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10 A french version of the Ordonnance is available on <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000339259/>.

11 Available on the Boletín Oficial del Estado of December 29 on its webpage <https://www.boe.es/boe/dias/2018/12/29/pdfs/BOE-A-2018-17987.pdf>.

12 Available on <https://www.boe.es/boe/dias/2015/03/31/pdfs/BOE-A-2015-3444.pdf>.

the exercise of these functions, whereas the Portuguese periodic declaratory obligation is an obligation for all magistrates, indifferently and permanently.

## **6. Legal and disciplinary consequences arising out the violation of the duty prescribed by the law 52/2019**

Article 22 of Law 52/2019 of July 31 states that the practice of crimes of responsibility by holders of political offices and by senior public office-holders in the exercise of their duties is regulated by a proper law concerning to its conditions of incrimination and potential accessory penalties. In Portugal that law is designated as Crimes of Responsibility of Holders of Political Office law (Law 34/87 of July 16).

That law realizes the principle according which the penalties must have a legal proper basis.<sup>13</sup> In that sense it provides and stipulates punishments for crimes such as treason, undermining the Constitution of the Republic, undermining the rule of law, coercion, prevarication, denial of justice, receiving undue advantage, or corruption, among others (articles 14 to 27). However, for the purposes of crimes of responsibility, the law does not include judicial magistrates in the definition of holders of political office or high public officers in its articles 3 and 3-A (in short, where it is stated the responsibility of the President of the Republic, the President of the Parliament, the Government and its members, members of the Parliament and Portuguese members of the European Parliament, members of administrative and local bodies and designated members of public companies and entities).

Therefore and primarily, it is within the scope of Law 52/2019 that answers – sanctions – about the failure to comply with the periodic reporting obligations must be sought. Moreover, article 20 is crystal clear when it states, under the heading “Supervision”, that “the analysis and supervision of the declarations submitted under the terms of this law is the responsibility of an entity to be identified in a specific law, which

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13 That principle is laid down in the article 29 of the Constitution of the Portuguese Republic, as also in the article 1 of the portuguese Penal Code. Moreover, the principle of legality in criminal proceedings is enshrined in the European Convention on Human Rights.

defines its powers, organization and operating rules”. That entity is the Superior Council of the Administrative and Taxation Courts for the judges of these tribunals and the Superior Council of the Judiciary for the ones who take office in these type of tribunals, in accordance with its Regulation of Declarative Obligations.<sup>14</sup> For the prosecutors, it is applicable the law 68/2019 of August 27, which approved the correspondent Statute<sup>15</sup>.

In the answer it is elementary to mention that Portuguese law provides for two levels or sanctioning regimes under the scope of law 52/2019. It provides for a special system of sanctions, set out in article 11 and resulting in the sanctions of loss of office, dismissal or resignation, but this system of sanctions is related to the violation of certain duties of holders of political and public offices – for example, the violation of the duty of exclusivity of duties – which are not the same as the violation of the obligation to submit periodic declarations and which do not also affect judicial magistrates.

Regarding to the periodic declaration only, therefore, the law we have been referring states in article 18 what it calls "failure to comply with reporting obligations". The law distinguishes three systems of non-compliance, which may be classified as follows:

- non-submission or incomplete or incorrect submission of the declaration or its updates;

- intentional non-submission of the declaration;

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14 These rules of procedure are enshrined in three different diplomas. For the magistrates of the judicial courts that rules of procedure are entitled by the the Regulation 226/2021 of March 15, and for the Public Prosecutors exists the Regulation 805/2020 of September 24. Lastly, for the judges of the Administrative and Taxation Courts its project of regulation is under public discussion. A provisory version of the text can be find here (portuguese version only).

15 Available online in

[http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?ficha=201&artigo\\_id=&nid=3119&pagina=3&tabela=leis&nversao=&so\\_miolo=](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?ficha=201&artigo_id=&nid=3119&pagina=3&tabela=leis&nversao=&so_miolo=) (portuguese version only).



- intentional omission of assets or income on the declaration submitted.

**a) Non-submission vs incomplete or incorrect submission of the declaration or its updates**

The absolute non-submission or the incomplete or incorrect filing of the declaration or its updates is described in numbers 1 to 3 of article 18 of Law 52/2019. According to number 1, a non-submission or an incomplete submission gives rise to a notification to the holder of the obligation by the responsible inspection entity, conceding a period of 30 calendar days to remedy the defect, either by submitting it, completing it, or correcting it.

If this period has expired without the declaration being submitted, completed or corrected, and only with the exception of the President of the Republic, the President of the Assembly of the Republic and the Prime Minister, the recalcitrant officer incurs in the risk of a declaration of loss of office, resignation, or judicial dismissal, as the case may be.

These obligations also cover former holders of offices covered by declaratory obligations. If they fail to submit the respective declarations, the sanction will be a disqualification for a period of one to five years from holding an office that requires such a declaration and which does not correspond to the performance of duties as a magistrate.

**b) Intentional non-submission of the declaration**

A different scenario occurs when the personality required to submit a declaration does not submit it, not because he forgot to do so or is reluctant to do so, but intentionally. In such cases, the legal regime is more severe and, also after notification by the inspection entity, a punishment for the crime of qualified disobedience occurs, with a prison sentence of up to 3 years (paragraph 4 of article 18 of Law 52/2019).

However, even if there is an intentional non-submission of declarative obligations, if the recalcitrant nevertheless does not omit from the declaration income, real estate and assets that he or she is legally required to submit to the Tax Authority, the punishment is more lenient and reduced to a fine of up to 360 days (article 18(5) of Law 52/2019).

### **c) Intentional omission of assets or income on the declaration submitted**

This hypothesis is referred to in article 18(6) of the Law. According to the rule and its regime provided, an omission of assets or income worth more than 50 minimum monthly wages (33,250.00 EUR) is punished with imprisonment up to 3 years, once the omission occurred in order to conceal their own financial position, assets and liabilities.

Lastly, the discovery of unjustified assets additions also has a consequence in terms of tax law. Thus, once the value is correspondent to more than 50 minimum monthly wages takes time a subtraction to IRS at a special rate of 80% (article 18 (7) of Law 52/2019).

But it is of utmost importance refer the content of article 5 (2) of law 52/2019. According to this, only the regime of submission of the income and assets declaration obligation is applicable to judges and public prosecutors under the scope of this law.

As regards judges and prosecutors, therefore, the sanctions arising from the breach of this submission are set out, not in Law 52/2019, which seems to restrict its application in this field to holders of political offices and senior political positions, but in the corresponding professional statutes.

In fact, the Statute of Judicial Magistrates does not exempt judges who fail to comply with income and assets reporting obligations from disciplinary sanctions.

In effect, the Statute, approved by Law 21/85, of July 30, qualifies as a very serious offence, in article 83 - G:

- paragraph g): the falsehood or relevant omission in the provision of data and elements contained in applications or requests for licenses, compatibility statements, remuneration, economic aid or any other documents that may be used to assess a claim or for the fulfillment of a legal duty of the applicant;

- paragraph j): repeated failure to comply with the legal duties of submitting a declaration of income and assets.

As this is a very serious offence, there are four possible disciplinary sanctions (articles 91, 100, 101 and 102 of the Statute):

Transfer;

Suspension from office;

Pensionable or compulsory retirement;

Dismissal or resignation.

The same discipline is prescribed by the law 68/2019. According to this law, which defines the Statute of the Public Prosecutors, also in case of repeated non-submission of the declaration of income and assets the Prosecutor faces the risk of a qualified very serious offence, sanctioned with one of four possible consequences according to its articles 214 paragraph j), 227, 236, 237 and 238: transfer; suspension from office; pensionable or compulsory retirement; or dismissal.

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