

Cases and rulings

Country Code	Year	Reference details title	Reference details URL	Hate Bias motivation	Court / Body	Key facts of the case	Results (sanctions, outcome) and key consequences or implications of the case	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Key quotation in original language and translated into English with reference details
Portugal	2023	Portugal/ Supreme Court of Justice/ Judgement 99/17.0JBL/S8-K/11-A/51	https://www.dgsi.pt/stj.nsf/954f0ce6ad9dd8b980256b5f003fa8145d8e0525c1774c7d80258a3d002d8103?OpenDocument	Nationality	Supreme Court of Justice (Supremo Tribunal de Justiça)	The defendants A. and B. requested the dismissal of a judge. Both defendants claimed that from the moment Portugal took part in the invasion of Iraq, an unspeakable "Islamophobia" was instilled in all Portuguese people, including judges, and that the chosen judge couldn't be impartial, which violated the principle of the natural judge (foreseen in the Criminal Procedure Code) and due process rules foreseen in the Portuguese Constitution and the European Convention on Human Rights.	The Court decided to dismiss as manifestly unfounded the request for dismissal presented by A. and B.	The court began by explaining that in the balance between the principle of the natural judge, the guarantee of the judge's independence, the defendant's rights, and the guarantee of impartiality (as enshrined in Article 6 of the European Convention on Human Rights), the Code of Criminal Procedure found the appropriate proportionality, through foreseeing as a requirement for dismissal of a judge "a serious and grave reason, adequate to generate suspicion about his/her impartiality". However, the court found that, in this specific case, no fact, evidence or element of a personal or functional nature affects the objective impartiality, or the public perception of such impartiality, of the chosen judge. The judge in question had no contact with the defendants, had not intervened in the proceedings at any of its stages, and has not been accused of any actions, opinions or relationships that would diminish her impartiality or her appearance of impartiality at the time of judgement.	The key issue was to decide on the impartiality of the chosen judge, due to a supposed generalised "Islamophobia" instilled in all Portuguese people after the invasion of Iraq.	"Com efeito, a jurisprudência constante do TEDH, desde o acórdão Piersack v. Bélgica, de 1982, tem trilhado o caminho da determinação da imparcialidade pela sujeição a um teste subjetivo, incidindo sobre a convicção pessoal e o comportamento do concreto juiz, sobre a existência de preconceito ou bias face a determinado caso, e a um teste objetivo que atenda à perceção ou dúvida externa legítima sobre a garantia de imparcialidade." "In fact, the ECtHR's settled case law, since the 1982 Piersack v. Belgium judgment, has followed the path of determining impartiality by subjecting it to a subjective test, focusing on the personal conviction and behaviour of the specific judge, on the existence of prejudice or bias about a given case, and to an objective test that takes into account the perception or legitimate external doubt about the guarantee of impartiality."

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