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Fairness in Criminal Appeal

A Critical and Interdisciplinary Analysis
of the ECtHR Case-Law

 Springer

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Chapter 5

The Recordings Model in Portugal: The Defendant's and the Victim's Perspectives



Tiago Geraldo and Nuno Igreja Matos

5.1 Introduction

Criminal immediacy¹ entails the judge establishing a relationship with the defendant, the facts, and the evidence gathered during the criminal proceeding. On this basis, immediacy, having its origins² in the overcoming of secret proceedings and during the reform of what were exclusively inquisitorial procedures, is traditionally conceived as encompassing both a formal (the judge responsible to contact with the evidence must also be the judge responsible for the final decision) and a material (the judge must contact the evidence in the most direct form) dimension.³

In obedience to its historic origins and its current core contents, immediacy demands, in its optimal implementation, the judge to have a direct and personal contact with all the relevant evidence—a contact that is usually seen as a guarantee that the judge is to decide only after being face-to-face with the most pertinent elements of the case in a publicly visible proceeding. Spatial proximity, as well as some degree of personal interaction, are thus elementary requirements for the maximum immediacy: they give assurance not only that the judge will have a robust

¹On the immediacy principle, see Dias (2004), pp. 229–235; Ibáñez (2006), pp. 9–32; Summers (2007), pp. 47 et seq.; Ruiz (2016), pp. 249–268; Winter (2019), pp. 279–293; Silva (2020), pp. 697–713.

²For the origins of immediacy, see Summers (2007), pp. 47–50; an overview of German scholarship on the principle can be found in Selçuk (2012), pp. 7–10.

³A third dimension can also be laid out: a temporal dimension, according to which the evidence should be examined as soon as possible with relation to the moment of its production. Accordingly, da Silva (2020), p. 698, quoting Willimman (2016), p. 161.

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