



Universidade de Aveiro

2023

**ANA LUÍSA REGO
MELRO**

**AS DUAS FACES DE JANUS DA MODERNIZAÇÃO
DAS POLÍTICAS PÚBLICAS: INOVAÇÃO E
TRADIÇÃO**

O caso do sistema judicial português



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Tese apresentada à Universidade de Aveiro para cumprimento dos requisitos necessários à obtenção de aprovação do grau de Doutor em Políticas Públicas, realizada sob a orientação científica do Doutor Filipe Teles (orientador), Professor Auxiliar do Departamento de Ciências Sociais, Políticas e do Território, da Universidade de Aveiro e da Doutora Lídia Oliveira (coorientadora), Professora Associada com Agregação do Departamento de Comunicação e Arte, da Universidade de Aveiro.

Apoio financeiro da FCT, com a Ref.^a
2020.07241.BD.

Dedico este trabalho aos que ainda acompanham as minhas doses de loucura.

o júri

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agradecimentos

Apenas no final da realização de um trabalho longo, complexo e árduo nos apercebemos da quantidade de pessoas que, de uma maneira ou de outra, contribuíram para que fosse possível chegar ao fim e fazê-lo com sucesso. Esta secção é dedicada a essas pessoas.

Começo por agradecer a todos os entrevistados que, desde o primeiro contacto estabelecido, se mostraram totalmente disponíveis para responder às questões e que assim se mantiveram durante a realização da entrevista. Os primeiros entrevistados, que autorizaram a utilização da sua identificação foram: Dr. Joaquim Costa, Dr. João Farinha, Dr.^a Alexandra Leitão, Dr. José Macieira, Dr.^a Maria de Fátima Fonseca, Dr. Rui Batista, Dr.^a Anabela Pedroso, Dr.^a Francisca Van Dunem. Por todo o cuidado, atenção e interesse demonstrados.

Numa segunda ronda de entrevistas, também aqui os contactos estabelecidos foram de grande relevância para o desenvolvimento do trabalho e também aqui se mostraram inteiramente disponíveis em termos de tempo e de cuidado nas respostas facultadas. Por motivos de cumprimento do anonimato, não será possível identificá-los, mas fica aqui o agradecimento aos oito entrevistados.

Agradeço à minha família, que sempre demonstrou apoio incondicional nestas etapas menos ortodoxas que tendo a seguir.

Agradeço, ainda, aos meus amigos, que foram um pilar fundamental nestes dois anos. De referir a Liliana Gonçalves, pelas suas orientações sempre tão pragmáticas e pelas dicas facilitadoras, em todos os momentos em que a palavra de ordem devia ser agilizar e relativizar.

Finalmente, um agradecimento especial aos meus orientadores, Professor Filipe Teles e Professora Lídia Oliveira. Este trabalho não é possível sem que existam, no entanto, é preciso ter a sorte de trabalhar com pessoas inteligentes, conhecedoras e disponíveis para partilharem todo esse conhecimento. Ao mesmo tempo, permitirem a liberdade suficiente para que o trabalho se desenvolva sem amarras e num sentido, por vezes, diferente daquele que tinham visionado. À Professora Lídia agradeço, ainda, a amizade de já longa data e a presença e força em todos os momentos.

palavras-chave

sistema judicial, modernização, políticas públicas, inovação, tradição, Justiça.

resumo

O doutoramento apresentado é resultado da investigação realizada, nos últimos dois anos, sobre modernização do sistema judicial português.

Os resultados da investigação são apresentados em formato de artigos científicos publicados ou em fase de publicação em revistas da área científica do doutoramento. São quatro os artigos que estão contidos no corpo da tese. E, em anexo, constam três artigos que foram, ainda, redigidos e submetidos a revistas, encontrando-se em fase de avaliação pelos pares.

Modernização é a palavra-chave da tese, com a sua aplicação ao que se entende ser uma macropolítica pública (e cujo porquê se encontra explicado no primeiro artigo), o sistema judicial português. Aliás, modernização tem sido, desde há uns anos, e em vários domínios de atuação (Delahais & Lacouette-Fougère, 2019; Highman, 2019; Kim & Choi, 2019; Koprić, 2019; Pacino, 2019; Rhongo, De Almeida, & David, 2019; Tonelli, Voicu, & Zulean, 2019; Vecchi, 2019) um processo muito relevante e presente, nomeadamente, nas políticas públicas. A investigação tem como objetivo relacionar a relevância e presença da modernização aplicada ao caso concreto do sistema judicial português, considerando, por exemplo, teorias ligadas à Nova Gestão Pública (Hood, 1991; Dunleavy e Hood, 1994; Gray e Jenkins, 1995).

A investigação segue uma abordagem metodológica com uma configuração tripartida: primeiro foi realizada análise documental aos Programas do Governo, elaborados entre 1976 e 2019, considerando as perspetivas de Pedroso, Trincão e Dias (2003) e Martinelli (2005). De seguida, foram aplicadas entrevistas semiestruturadas aos decisores dos projetos de modernização do sistema judicial. Por último, foram aplicadas entrevistas aos implementadores desses projetos.

Após a aplicação da metodologia e realização da análise dos dados recolhidos, foi possível concluir que nem sempre se concretiza de forma fluída e sem constrangimentos a conciliação entre a modernização (a transição para um novo mapa judiciário, a implementação da digitalização dos processos e procedimentos ou a desburocratização dos mesmos) e a tradição (o rigor existente em alguns formalismos ou a dificuldade em eliminar processos burocráticos intermédios). Ainda que tal dependa, cada vez mais, das instituições que aplicam os procedimentos e das pessoas que o fazem, conforme conclui, igualmente, Lopes (2021, p. 51), sendo, por isso, mais conflituosa a coexistência entre modernização e tradição em algumas instituições do que noutras.

Não obstante, para que aquelas conciliação e coexistência ocorram, têm sido de grande relevância as imposições europeias, através da emanação de sucessivos regulamentos e diretivas. A influência da integração de Portugal na União Europeia, em 1986, tem sido sentida a todos os níveis no sistema judicial, o que muito vem refletido nos Programas do Governo analisados, por exemplo, com ênfase atribuída à constante atualização legislativa e à modernização do sistema judicial, sobretudo no que diz respeito ao cumprimento do que deverão ser os seus princípios – transparência, eficiência, eficácia, proximidade ao cidadão, entre outros.

Tal não ocorre sem os desafios sentidos pelas partes envolvidas nessa modernização, quer do lado dos decisores de Políticas Públicas, quer do lado dos atores do sistema judicial. E estes desafios são de diversa índole: uns mais relacionados com os próprios recursos humanos, como sejam, o facto de serem em menor número do que o necessário para dar respostas atempadas ou a sua formação em áreas específicas, que contribuiria para agilizar determinados procedimentos; outros relacionados com as infraestruturas, como a (in)existência de Tecnologias de Informação e Comunicação atualizadas; outros, ainda, ligados às constantes exigências europeias.

Para auxiliar a compreensão destes desafios, são apresentados excertos das entrevistas e estatísticas, que permitem corroborar as conclusões alcançadas.

Nas próximas páginas apresentam-se, então, os resultados alcançados com a aplicação da metodologia definida para a implementação do projeto de investigação.

keywords

judicial system, modernization, public policies, innovation, tradition, Justice.

abstract

The Ph.D. thesis presents results from the research carried out in the last two years on the Portuguese judicial system modernization.

Research results are presented in the form of published articles or in the process of being published in the doctoral scientific area. Four articles are included in the body of the thesis. Moreover, three articles were written (and may be found in the annexes) but are still in the peer review phase.

Modernization is the thesis' keyword, with its application to what is understood to be a macro public policy (and the reason for that is explained in the first article): the judicial system. For several years now, modernization has been a very relevant and current process, namely in public policies, in several fields of activity (Delahais & Lacouette-Fougère, 2019; Highman, 2019; Kim & Choi, 2019; Koprić, 2019; Pacino, 2019; Rhongo et al., 2019; Tonelli et al., 2019; Vecchi, 2019). The research aims to relate the modernization relevance and presence to the Portuguese judicial system, considering, for example, theories connected to New Public Management (Hood, 1991; Dunleavy e Hood, 1994; Gray e Jenkins, 1995).

The investigation methodological approach has a tripartite configuration: the first was the 1976-2019 Government Programs' document analysis, considering the perspectives of Pedrosa, Trincão, and Dias (2003) and Martinelli (2005). Then, semi-structured interviews were applied to the modernization projects' definers. Finally, interviews with the actors of these projects were addressed.

After the methodology application and the collected data analysis, it was possible to conclude that there are still some constraints when it comes to assure the conciliation between modernization (the transition to a new judicial map, the implementation of the processes and procedures' digitization or the reduction of bureaucracy) and tradition (the rigor existing in some formalisms or the difficulty in eliminating intermediate bureaucratic processes). As Lopes (2021, p. 51) also concludes, this conciliation increasingly depends on the institutions that apply the procedures and the people who do it, which leads to a more prominent coexistence between modernization and tradition in some institutions than others.

However, for that conciliation and coexistence to occur, European impositions have been of great importance (through EU successive regulations and directives). The influence of Portugal's integration into the European Union, in 1986, has been felt at all levels in the judicial system, which is very much reflected in the analyzed Government Programs, for example. In those documents, the emphasis is given on constant legislative updating and the modernization of the judicial system, mainly to what its principles should be – transparency, efficiency, effectiveness, proximity to citizen, among others.

This does not occur without the challenges felt by the parties involved in this modernization, either on the side of Public Policy decision makers or on the side of the actors of the judicial system. And these challenges are of different nature: some more related to human resources, such as the fact that there are fewer people than necessary to provide timely responses or related to the fact that they need training in specific areas. Others related to infrastructure, such as the existence of up-to-date Information and Communication Technologies. And other challenges, linked to the constant European demands. To help understand these challenges, excerpts from the interviews and statistics are presented, which allow the conclusions reached to be corroborated.

In the following pages, the results achieved with the application of the methodology defined for the implementation of the research project are presented.

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INTRODUÇÃO

De acordo com o Dicionário de Mitologia Grega e Romana, Jano (ou Janus) era o conhecedor do passado e do futuro. Este deus romano aparece sempre representado com duas faces, em que uma estaria voltada para a frente e a outra para trás (Kury, 2009, pp. 314-315). O deus dos deuses, assumindo muitas facetas, converteu-se no “deus das transições e das passagens, assinalando a evolução do passado para o futuro, de um estado a outro, de uma visão a outra, de um universo a outro, deus das portas” (Chevalier; Gheerbrant, 1997, p. 382).

Recorrer a Janus para dar o mote à investigação a desenvolver, é ter como linha de pensamento duas perspetivas ou partir do pressuposto de que ambas se combinam, sendo uma o verso e outra a frente. No caso concreto, as perspetivas da tradição e da inovação das políticas públicas. Ou, mais específico ainda, da tradição e da inovação do sistema judicial português.

Assim, o trabalho de investigação desenvolvido e relativamente ao qual se apresentam agora os resultados debruça-se sobre duas faces que o sistema judicial português tem de conciliar, de modo que os processos e procedimentos que aí operam se concluam. E, melhor, que essa operacionalização ocorra em tempo breve e com eficiência. Ainda que essa conciliação se faça, por vezes, passando por momentos de tensão entre procedimentos e até entre decisões.

Para proceder à compreensão desses momentos de conciliação e tensão entre as duas faces de Janus do sistema judicial português em análise – tradição e inovação –, a investigação atravessa várias etapas, passando pelas mais teóricas às mais empíricas, pelo aprofundar do que diz a literatura e dos principais conceitos relacionados com a temática (como a Nova Gestão Pública, modernização, políticas públicas, inovação, tradição, entre outros), até à recolha de dados empíricos, recorrendo à técnica de entrevistas semiestruturadas e respetiva análise de conteúdo e estatística.

Uma vez que a tese de doutoramento que aqui se apresenta segue o formato de agregação de um conjunto coerente e relevante de trabalhos científicos, a introdução será formada por três subcapítulos, que pretendem estabelecer o estado da arte que orientou todo o trabalho realizado. De seguida, ainda na introdução, far-se-á uma reflexão relativamente às principais motivações para o estudo, os contributos e elementos de inovação da tese e as limitações e constrangimentos encontrados na sua concretização. Finalmente, será apresentada a estrutura do documento, tendo em atenção a particularidade dos artigos científicos que o compõem.

Evolução das políticas públicas em Portugal

As políticas públicas, em Portugal, têm sofrido uma evolução que, por motivos óbvios, desde 1986, encontra paralelismo com a experiência de outros países europeus, dada a adesão à Comunidade Económica Europeia (atual União Europeia). O processo de europeização (Ongaro, 2009, p. 238) foi acompanhado de uma mudança de paradigma no entendimento das políticas públicas, influenciando quer a sua dinâmica de formulação e de execução, quer de evolução. Este conceito é entendido por Börzel e Risse (2007) como “The various ways in which institutions, processes and policies emanating

from the European level influence policies, politics and polities at the domestic level” (Börzel & Risse, 2007, p. 485).

A europeização, considerada como um processo, que confere dinamismo à mudança operada aos vários níveis das políticas públicas (micro, meso e macro), implicou também o exercício de uma certa pressão (por vezes, bastante evidente e, outras vezes ainda, profunda e mais exigente) para que se fossem concretizando reformas e a modernização de diversas entidades do setor público (Ongaro, 2009, pp. 238-239). Assim, encontram-se evidências na literatura relativamente à ocorrência do processo de europeização das mais variadas políticas públicas, de entre os mais diversos setores públicos. Veja-se a título de exemplo: a educação e o ensino superior (Barros, 2019; Corcetti & Loreto, 2020), a política criminal (Fernandes & Brandão, 2019), o emprego e a formação profissional (Fernandes & Pedroso, 2017), o comércio e os negócios (Santa, Brandão, & Marques, 2016), a legislação e os próprios tribunais (Teixeira & Pinto, 2017). Especificamente, como uma ramificação destas últimas, encontra-se o sistema judicial português, aqui em análise.

Do que se trata, concretamente, é da modernização das políticas públicas portuguesas, modernização essa que implica a intervenção de diversas variáveis: processos e procedimentos; relações entre atores; modos de fazer, que vão desde a aprendizagem contínua até à forma como se aplicam os conhecimentos adquiridos e a agilização requerida à função desempenhada; organização dos serviços; comunicação interna e externa, com a ênfase crescente na relação com o cidadão; entre outras dimensões.

A todos estes níveis, é visível a exigência constante e crescente de modernização, desde, pelo menos, 1986, e nas várias áreas de intervenção governamental: educativa, cultural, económica, social, fiscal, administrativa, etc. (Antunes, 2017; Daniel, Monteiro, & Ferreira, 2016; Dias & Seixas, 2017; Figueiredo & Pereira, 2010; Pereira, Pinto, & Pereira, 2012). Não obstante, o que parece ocorrer é a concorrência entre uma perspetiva mais inovadora com uma mais tradicional e conservadora; a introdução de novos e mais ágeis processos que se intercalam com os ainda burocráticos; a existência de modelos hierárquicos horizontais ou híbridos em paralelo com os verticais e puros.

De acordo com Saravia (2007),

O processo de política pública mostra-se como forma moderna de lidar com as incertezas decorrentes das rápidas mudanças do contexto. Começa com os esforços de alguns países europeus, do Japão, dos Estados Unidos e do Canadá para responder, de forma mais eficiente, às demandas e necessidades sociais. (Saravia, 2007, p. 28).

Deste modo, o mesmo autor define como política pública o “fluxo de decisões públicas, orientado a manter o equilíbrio social ou a introduzir desequilíbrios destinados a modificar essa realidade.” (Saravia, 2007, p. 28). Assim, para Saravia, as políticas públicas têm uma finalidade concreta, bem delimitada, seja a justiça social, a manutenção do poder ou a consolidação da democracia, para o cumprimento das quais são adotadas determinadas medidas. O cumprimento dessa (ou dessas) finalidade(s) realiza-se através de ações/omissões concretas, pensadas para a

concretização de objetivos que alteram determinada realidade, sistema ou setor (Saravia, 2007, p. 29).

Na mesma linha de pensamento, Mincato (2012) define as políticas públicas como sendo

todas as decisões e também as não decisões políticas que afetam assuntos e questões de interesse público. Genericamente, em matéria política, tomar uma decisão ou decidir não fazer nada diante dos problemas que vão surgindo, sejam eles econômicos, sociais, sejam eles ambientais ou políticos, é uma decisão política. (Mincato, 2012, p. 83).

De acordo com Secchi (2011), a instituição de uma política pública ocorre porque se pretende resolver um problema, contudo, este apenas dá lugar a uma política pública se for relevante em termos de coletivo (número de pessoas que atinge) (Secchi, 2011, p. 2) ou se se tratar de um problema grave.

De acordo com o mesmo autor,

Para um problema ser considerado “público”, este deve ter implicações para uma quantidade ou qualidade notável de pessoas. Em síntese, um problema só se torna público quando os atores políticos intersubjetivamente o consideram problema (situação inadequada) e público (relevante para a coletividade). (Secchi, 2011, pp. 7-8).

Complementando, é política pública porque é decidida e implementada pelas autoridades públicas, pretende alcançar o bem comum e dar resposta às necessidades da sociedade, resultando de uma escolha em termos de o que resolver e quando (sendo as omissões, como se viu, também um reflexo das próprias políticas públicas) (Baptista, Pocinho, & Nechita, 2019, p. 80).

Reportando as afirmações à presente investigação, constata-se que o sistema judicial (a sua organização e funcionamento) é, hoje mais do que nunca, uma política pública, composta por várias dimensões e procedimentos, setores, respostas às necessidades da sociedade, do cidadão e das empresas. Verifica-se, ainda, que, nos últimos anos, os objetivos definidos para o sistema judicial português têm sido a transparência, a eficiência, a proximidade ao cidadão, a equidade, com o fim último de garantir o aumento da confiança dos cidadãos no sistema judicial. Para o efeito, são chamadas à colação diversas estratégias, recursos, outros sistemas e departamentos, que se operacionalizam sob a forma de projetos concretos, como o *Justiça + Próxima, Tribunal+, Simplex*, entre outros.

No desenvolvimento da tese de Doutoramento foram tidas como linhas de orientação as abordagens dos modelos institucionalista, de processo, racional e incremental. Não se consegue perceber que o sistema judicial, aqui analisado de modo holístico, como já referido, não interligue vários modelos. Assim, em termos de modelo institucionalista, será relevante considerar que, no âmbito do sistema judicial, há uma relação próxima entre a política pública e as instituições governamentais, sendo que estas fazem cumprir, de modo coercivo até, as regras judiciais definidas, atribuindo-lhes legitimidade, universalidade e o modo coercivo de que se falava (Dye, 2009, p. 101).

O modelo de processo tem a sua presença na forma como o sistema judicial segue uma lógica de implementação, com a “identificação de problemas, organização de agenda, formulação, legitimação, implementação e avaliação” (Dye, 2009, p. 104). Um processo com uma dinâmica própria, tendo em conta as especificidades do sistema judicial, as suscetibilidades de quem atinge e os problemas que quer resolver.

Não obstante as suas características, o sistema judicial enquanto política pública tem presente a eficiência, a eficácia, os ganhos sociais máximos, sendo também estes fatores que se têm em conta na sua modernização. Assim, “os governos devem optar por políticas cujos ganhos sociais superem os custos pelo maior valor e devem evitar políticas cujos custos não sejam excedidos pelos ganhos.” (Dye, 2009, p. 111). Mas nestes cálculos estão também envolvidos “valores sociais, políticos e económicos sacrificados ou alcançados por uma política pública” (Dye, 2009, p. 112).

Finalmente, teve-se presente a relevância para a análise da política pública do sistema judicial o modelo incremental, que “vê a política pública como uma continuação das atividades de governos anteriores com apenas algumas modificações incrementais.” (Dye, 2009, p. 115). Será pertinente compreender que, na revisão das políticas públicas para os mandatos governamentais, não se operam mudanças disruptivas e que obrigam a reiniciar todo o processo e a repensar todo o modelo do início. Antes se aproveita o que tem sido realizado e se tem configurado como uma boa prática, seja por que motivo for (partidário, económico, entre outros). Até pela lógica do modelo racional, de evitar ter gastos que se afastem de uma lógica de eficiência (Dye, 2009, p. 115).

Todos estes modelos se compreendem em inter-relação, uma vez que se considera que todos eles contribuem para a reflexão do sistema judicial que aqui se fará, na sua globalidade, considerando os diferentes atores, os processos e procedimentos e os resultados alcançados.

Ainda assim, é continuamente exigido ao sistema judicial que se modernize e introduza nos seus procedimentos e nas interações entre os atores intervenientes nos processos (Magistrados, dos Tribunais, Magistrados do Ministério Público, Advogados, Consultores jurídicos, Solicitadores, Agentes de execução, Notários, Conservadores, Oficiais de Justiça, Mediadores, Administradores Judiciais, Agentes Oficiais da Propriedade Industrial, Organizações que prestam serviços jurídicos *pro bono*, Cidadãos, Pessoas Coletivas) ações e instrumentos inovadores. Esse continua a ser o desafio.

A título de exemplo, veja-se o caso do “*Plano Justiça + Próxima*”¹, que se prolonga, agora, até 2023. Este programa governamental de reforma do sistema judicial tem como palavras-chave inovação, proximidade, eficiência, acessibilidade, modernização, transparência, qualidade e robustez. Palavras que nem sempre se coadunam com a forma como, efetivamente, o sistema judicial poderá funcionar. Mas que são as definidoras de uma Nova Gestão Pública, que se verifica estar presente também na forma de definir e implementar políticas públicas em Portugal (Tavares, 2019; Teles, 2020).

No final dos anos 80, início dos anos 90, assiste-se, de acordo com Hood (1991) e Dunleavy e Hood (1994), à transição de uma administração pública tradicional ou ‘progressiva’ para uma Nova

¹ <https://justicamaisproxima.justica.gov.pt/>, consultado a 07 de março de 2020.

Gestão Pública (NGP). As características apontadas por Gray e Jenkins (1995) a esta NGP são a tendência para obscurecer ou eliminar a distinção entre os setores público e privado (governo como empresa) e para tratar o setor público como homogêneo; organizações mais flexíveis e adaptáveis, com estruturas mais planas e mais focadas, que incentivam o empreendedorismo, em vez de gestão burocrática e regimes de pessoal mais flexíveis; reinvenção do governo com estruturas que são guiadas pela missão em vez de pelas regras, descentralizadas e empreendedoras; sendo o atual sistema político ineficiente. E o que era antes perspetivado como positivo (rotinas burocráticas e códigos de conduta profissionais) é avaliado como custos e não como benefícios (Gray & Jenkins, 1995).

Ainda que haja, de facto, uma lacuna entre o que seriam objetivos da NGP e o que está implementado a nível macro, isso não significa que a nível micro não se assistam a processos inovadores e de mudança, de adaptação às novas exigências sociais, com flexibilização de processos e recurso a novas Tecnologias de Informação e de Comunicação (Ongaro, 2009, pp. 240-241). Esta é uma evidência no sistema judicial português, sendo os Tribunais (e todos os outros setores e serviços que fazem parte do sistema), enquanto órgãos de soberania, estruturas pesadas, mas os seus processos a nível meso e micro, bem como a sua estrutura e organização, foram sofrendo mudanças ao longo dos últimos anos, que justificam que se considere que há uma conjugação entre tradição e modernização.

Esta é, aliás, a conclusão de Filipe Teles (2020), quando se refere à lentidão da instituição de novas práticas no setor público, considerando que os últimos 45 anos de democracia (após o que foram 41 anos de ditadura) foram, paulatinamente, vendo introduzidos processos de simplificação, modernização, proximidade com o cidadão, eficiência e transparência (Teles, 2020, pp. 446-447). Não obstante, tal como já havia referido Ongaro, estes processos vão sendo introduzidos mais ao nível micro da gestão pública, o que não deixa de ter impacto (bem pelo contrário) ao nível macro (Teles, 2020, pp. 448-449).

Nas palavras de Catalá (2005), o que ocorreu foi uma necessidade sentida pelas instituições públicas em romperem com modelos mais burocráticos de governação e implementarem modelos inovadores, reconceptualizando, dessa forma, a relação entre política e administração. Para a compreensão desta evolução do Estado e das políticas públicas, foi pertinente avaliar que a modernização administrativa se opera de modo que “a mudança e a inovação parecem cada vez mais procurar os seus alicerces na repetição” (Fonseca & Carapeto, 2009, p. 69).

Encontra-se, pois, aqui a justificação para a perspetiva adotada na investigação desenvolvida, no estudo do sistema judicial português, como política pública, aliar inovação e tradição. As funções do sistema judicial (garantia à sociedade – cidadãos e empresas – da proteção, segurança, justiça, equidade e certeza) exigem que se vá mantendo semelhante a ele mesmo, não obstante caminhe para a modernização, seguindo modelos inovadores.

Fonseca e Carapeto (2009) consideram que se conjugam duas perspetivas nesta evolução das políticas públicas portuguesas (nas quais se inclui o sistema judicial): a nova gestão pública e a corrente participativa. Ou seja, evolui-se de um modelo hierárquico para um modelo em rede, sendo

este último caracterizado por “fomentar a liderança, a inovação, a flexibilidade, a autonomia, a responsabilidade, a orientação para os resultados”. (Fonseca & Carapeto, 2009, p. 76). Ademais, na corrente participativa, as políticas públicas são orientadas para o cidadão, quer seja por via da resposta às suas necessidades, ou pela garantia da proximidade e participação.

Fazendo, agora, um pouco de retrospectiva histórica, verifica-se que, Portugal passou de um país que atravessou uma ditadura de 41 anos (1933-1974) para um Estado que governou, nos primeiros tempos de democracia, apostando nas nacionalizações, aumentando substancialmente a sua dimensão. O que tem impacto na forma de administrar e de definir políticas públicas.

No final dos anos 70 e início dos anos 80, foi exigido que se preparasse para sua integração na, então, Comunidade Económica Europeia (CEE), tendo o pedido oficial para a adesão sido formulado em 1977. Desde aí que é inevitável a influência dos modelos europeus governativos, legislativos e de definição de políticas públicas. Em 1986, entra em vigor o Tratado de Adesão à CEE. Assim, também a partir desta altura, e de forma mais evidente, é sentida a influência da Europa na modernização e eficiência da administração pública e nas políticas públicas.

Para Teixeira (2017), distinguem-se dois períodos no processo de europeização português, que, acrescenta-se, acabam por influenciar a definição das políticas públicas: entre 1986 e 2000, caracterizado pela “convergência e pelo euroentusiasmo”; e o segundo, entre 2001 e 2015, “marcado pela divergência e pelo euroceticismo ou realismo” (Teixeira, 2017, p. 25).

Por todos os motivos, mas, sobretudo, pela crise económica instalada no país no período pós-ditadura, o primeiro período foi, essencialmente, marcado por políticas de relançamento da economia portuguesa e de internacionalização. No entanto, é também em 1986 que é criada a Secretaria de Estado da Modernização Administrativa (SEMA), que tinha como objetivos a simplificação administrativa, a desburocratização e a desintervenção do Estado na economia (Tavares, 2019, pp. 50-51). Ainda neste primeiro período, quando, em 1992, Portugal assume a presidência da UE, somam-se os objetivos políticos aos económicos, com sinais inequívocos “da europeização não só das políticas públicas no plano interno, mas também da política externa e mesmo da política de defesa.” (Teixeira, 2017, p. 28), a atingir o seu auge, em 1998, com o euro.

O segundo período (2001-2015) foi, então, marcado pela divergência e o euroceticismo. O 11 de setembro de 2001, a invasão do Iraque, o alargamento da UE e a crise de 2008 foram alguns dos marcos que contribuíram para uma certa fratura europeia. Na administração pública entra-se num momento de gestão por objetivos. Mas é, também, neste período, criada a Agência para a Modernização Administrativa, responsável pela gestão, entre outros, do *Programa Simplex*. Nas palavras de Tavares (2019), 2009 a 2015, são anos com pouca ou nenhuma preocupação de reformas do Estado, o que tem impacto negativo na modernização das políticas públicas.

Em termos de influência da UE na definição e implementação das políticas públicas, concorda-se com Jalali (2017), quando o autor refere que “Portugal é um bom exemplo de como as instituições nacionais – e, neste caso, o poder executivo – são capazes de se adaptar às pressões supranacionais”, não obstante ser possível “observar o impacto da adesão à UE na estrutura e cultura

administrativas nacionais” (Jalali, 2017, p. 45). A primeira afirmação relacionada com a capacidade que o país demonstrou de não se ver descaracterizado em face das pressões europeias sentidas. A segunda porque, de facto, muitas agências, pelouros, secretarias de estado, direções-gerais e projetos foram criados a reboque da adesão à UE (Jalali, 2017). E, muitos deles, direcionados para a modernização das políticas públicas.

Caracterização do sistema judicial português

A presente investigação centra-se, especificamente, na análise do sistema judicial português. Tratando-se de uma das mais pesadas máquinas dos três poderes do Estado – executivo, legislativo e judicial (no sentido de que detém séculos de história, mas também porque assume (inter-)relações e intervenção direta em muitas, complexas e importantes dimensões da vida do cidadão e das empresas). É, também por esse motivo, uma das áreas onde mais se evidencia a presença da interação e “tensão” constante entre modelos inovadores e conservadores.

Será pertinente proceder a uma análise do sistema judicial português, descrever concretamente o objeto de estudo da investigação, nomeadamente, a sua organização e hierarquia, bem como os principais agentes. Inicia-se por dizer que, por sistema judicial, entendem-se as soluções oferecidas pelo sistema no seu todo, oferecidas enquanto política pública. Neste contexto, adota-se uma perspetiva holística, ou seja, as suas decisões e o seu corpo de recursos humanos e materiais; mas, igualmente, todos os processos, procedimentos e a sua organização estruturo-funcional.

Assim, integram o sistema judicial português, em termos de funções e funcionalidades, no contexto da presente investigação, os Registos e Notariado, a Solicitoria, os Tribunais, a Administração Judicial, as forças policiais e a Resolução Alternativa de Litígios. Em termos de colaboradores, serão todos os que têm uma intervenção direta ou indireta nos procedimentos, a título de exemplo: Juizes, Magistrados do Ministério Público, Advogados, Consultores Jurídicos, Solicitadores, Agentes de Execução, Notários, Conservadores, Oficiais de Justiça, Mediadores, Administradores Judiciais, Agentes dos Órgãos de Polícia Criminal.

Os Tribunais são a estrutura mais complexa e onde todas as outras atividades e estruturas acabam por confluir. Far-se-á, por isso, uma análise um pouco mais detalhada.

Os tribunais portugueses dividem-se em tribunais judiciais, tribunais administrativos e fiscais, tribunais militares (estas últimos constituídos apenas em situações muito excecionais, por isso, não serão considerados), tribunais arbitrais e julgados de paz.

Os tribunais judiciais e administrativos e fiscais apresentam uma subdivisão tripartida, que funciona considerando o valor da ação interposta no tribunal, bem como a possibilidade de recurso da

decisão, subindo da base (1.ª instância) para o topo (Supremo Tribunal de Justiça ou Administrativo). Têm a seguinte configuração:

Figura 1. Hierarquia dos tribunais judiciais

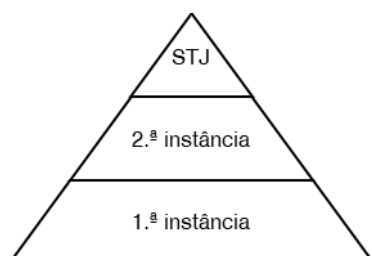


Figura 2. Hierarquia dos tribunais administrativos e fiscais



Os tribunais judiciais podem apresentar soluções dentro de diferentes competências: trabalho, família e menores, comércio, entre outras. O que já não acontece com os tribunais administrativos e fiscais.

Os tribunais arbitrais e os julgados de paz (bem como a mediação)² são soluções alternativas de resolução de litígios, que pretendem oferecer meios mais ágeis, rápidos e, muitas vezes, com a intervenção direta das partes na decisão. É possível recorrer a essas soluções em situações muito concretas, considerando, também, o valor da causa ou o tipo de ação, por exemplo. Em relação a tribunais superiores, Portugal tem, ainda, o Tribunal de Contas, o Tribunal Constitucional e são reconhecidos os Tribunais Eclesiásticos.

As categorias profissionais dentro dos tribunais distribuem-se da seguinte forma: Magistrados (Juizes e Ministério Público), Oficiais de Justiça, Informáticos, Assistentes técnicos, Assistentes Operacionais e os Peritos.

Passando, agora, à descrição das demais estruturas. Os Registos e o Notariado³ são um serviço ao qual todos os cidadãos e empresas estão, inevitavelmente, ligados. Primeiro, porque é nas Conservatórias do Registo Civil que se realiza a inscrição de qualquer pessoa ou empresa que nasça/se constitua. Sendo também aí que se procede ao registo de qualquer informação de alteração ou morte/extinção das pessoas individuais ou coletivas. As Conservatórias do Registo dividem-se em Cíveis, Prediais, de Veículos, Comerciais e Direção-Geral da Administração da Justiça, no caso dos registos criminais.

Nos cartórios notariais é possível proceder à realização de casamentos e divórcios, testamentos, heranças e inventários, doações, compra e venda e permuta, procurações, reconhecimentos e certificados, registos e criação, alteração e extinção de associações.

² <https://justica.gov.pt/Resolucao-de-litigios>, consultado a 01 de agosto de 2022.

³ <https://irn.justica.gov.pt/>, consultado a 01 de agosto de 2022.

Como estruturas e serviços do sistema judicial há, ainda, a Solicitoria, os Agentes de Execução e a Administração Judicial. Para além do mandato judicial, são funções possíveis dos Solicitadores⁴ a elaboração de contratos e a prática de atos junto de conservatórias e cartórios notariais e a cobrança de créditos.

Já no que diz respeito aos Agentes de Execução⁵, asseguram as diligências necessárias em processos executivos, nomeadamente, as citações e notificações avulsas e a realização de despejos, averiguam a localização de pessoas e do seu património, penhoram bens e procedem à sua venda.

Finalmente, os Administradores Judiciais⁶ são uma categoria especificamente designada em processos de insolvência. Fiscalizam e orientam os atos requeridos nesses processos, como a gestão ou liquidação da massa insolvente.

De seguida, é relevante referirem-se os Órgãos de Polícia Criminal: Polícia Judiciária (PJ), a Guarda Nacional Republicana (GNR), a Polícia de Segurança Pública (PSP) e o Serviço de Estrangeiros e Fronteiras (SEF). Com competência para investigar crimes, receber queixas e denúncias e dar o devido seguimento. Por regra, a PJ é quem tem competência exclusiva para investigar crimes mais graves ou a partir de determinado valor.

Fazem, ainda, parte do sistema judicial os Advogados⁷, cuja função essencial é a de representar as partes em juízo e colaborar com a administração da Justiça.

Todos estes serviços, estruturas e atores são os que, no contexto da tese de doutoramento que aqui se apresenta, integram o sistema judicial português.

Assim, concorda-se com Tude, Ferro e Santana (2010) quando referem que

Diversos são os atores sociais interessados na discussão das Políticas Públicas, seja na formulação, na implementação ou na avaliação. Esses atores, cada um a sua maneira, procuram influenciar esse processo dentro do jogo político e podem ser divididos em atores estatais e atores privados.

O que entendemos por atores estatais são aqueles atores diretamente ligados à Administração Pública, que estão envolvidos na burocracia estatal ou ocupando cargos legislativos e executivos, sendo os políticos os principais representantes dos atores estatais.

[...]

Entretanto, as propostas das Políticas Públicas partem do Poder Executivo, e é esse Poder que efetivamente as coloca em prática. Cabe aos servidores públicos (a burocracia) oferecer as informações necessárias ao processo de tomada de decisão dos políticos, bem como operacionalizar as Políticas Públicas definidas. Em princípio, a burocracia é politicamente neutra, mas frequentemente age de acordo com interesses pessoais, ajudando ou dificultando as ações governamentais. (Tude, Ferro, & Santana, 2010, pp. 18-19).

⁴ <https://www.osae.pt/pt/pag/OSAE/profissao-solicitador/1/1/1/98>, consultado a 01 de agosto de 2022.

⁵ <https://www.osae.pt/pt/pag/OSAE/profissao-agente-de-execucao/1/1/1/99>, consultado a 01 de agosto de 2022.

⁶ <https://caaj.justica.gov.pt/>, consultado a 01 de agosto de 2022.

Ainda assim, é de realçar que, no caso concreto do sistema judicial e em Portugal, os atores privados também assumem grande relevância, a par com os públicos. Privados são os advogados, agentes de execução, solicitadores, conservadores e notários (estes últimos podem optar por exercer a sua função no setor público ou privado), que, na administração da Justiça, têm um papel relevante e uma voz que é ouvida e solicitada com frequência no processo de modernização. Por estes motivos, são peças fundamentais no processo de modernização do sistema judicial.

Nas palavras de Pedroso, Trincão e Dias (2003), “O direito em abundância e a incapacidade de resposta dos sistemas judiciais levaram os governos a desenvolverem programas (mais ou menos) ambiciosos de reforma da administração da justiça.” (Pedroso et al., 2003, p. 11).

A evolução do sistema judicial português tem sido caracterizada por algumas fases ou estádios, mas, em quase todas elas, é de realçar a menção à crise da justiça. Em todas as dimensões do sistema judicial, o que o cidadão procura e o que está frequentemente a ser avaliado para se perceber se tem sido dada resposta a esta crise são, essencialmente, três indicadores: aplicação de uma decisão justa, o custo de procurar o sistema judicial e o tempo que medeia entre a procura dessa decisão e a obtenção da mesma (Pedroso et al., 2003, p. 26). Indicadores que contribuem para que os projetos que se vão desenvolver concorram para mitigar as falhas encontradas e combater a mencionada crise.

Do que se trata na presente investigação é de analisar a modernização do sistema judicial português e, em concreto, neste subcapítulo é de caracterizar esse sistema. Assim, se uma das características (e que está, direta ou indiretamente, na base dos processos de modernização implementados) é a constante crise em que se encontra. Tal acontece porque se trata de uma estrutura, como foi possível verificar com a referência às funções e aos colaboradores que estão em constante interação, complexa. Complexa pelo número de funções, hierarquias e colaboradores, mas, igualmente, pelas situações que requerem solução por quem procura o sistema judicial.

Ademais, e porque, na maioria das vezes, alguns dos processos, atos e procedimentos não avançam sem que os anteriores respondam, a articulação entre estruturas é também uma das características. Esta que contribui, igualmente, para aumentar a sua complexidade.

O sistema judicial é, ainda, caracterizado pela crescente juridificação e judicialização das relações sociais entre indivíduos, entre estes e as empresas e entre empresas (Pedroso et al., 2003, p. 416). Com uma procura crescente do sistema judicial por parte de todos para encontrar soluções para as situações com que se deparam, seja a criação de uma empresa ou a resolução de um litígio.

Ao mesmo tempo, e mais recentemente, tem-se assistido à desjudicialização e informalização do sistema judicial português. Estas vêm ao encontro da modernização que se pretende operar, seja pela simplicidade que se quer alcançar, seja pela proximidade com o cidadão e transparência que se procura (Pedroso et al., 2003, p. 416).

Acrescenta-se às anteriores características a (ainda que ténue ou, de certo modo, prematura) interoperabilidade entre estruturas do sistema judicial, uma vez que essa tem sido também uma

⁷ <https://portal.oa.pt/>, consultado a 01 de agosto de 2022.

exigência cada vez mais crescente dos cidadãos e das empresas que procuram o sistema judicial, que esperam ver resolvidas as situações com o mínimo possível de interações com o sistema. Mas, igualmente, dos tribunais, por exemplo, quando tentam oferecer uma solução ao litígio e precisam de informação que apenas outras estruturas detêm.

De referir, ainda, a tradição (associada, sobretudo, aos usos e costumes). Característica que está muito associada à certeza e segurança jurídicas que tanto os cidadãos, como a sociedade como um todo procuram nas soluções que o sistema judicial lhes apresenta. Tradição esta que se mantém em simultâneo com a modernização. Ou seja, o sistema judicial é, ao mesmo tempo, tradicional e moderno no seu cerne. Introduzem-se novas profissões, novas especializações, inovação nos procedimentos e atos, tecnologias e novos recursos. Mas, ainda se vão mantendo as designações, as articulações entre estruturas para os requerimentos de determinados atos e os procedimentos para a realização desses requerimentos.

De seguida, será explorado o processo de modernização do sistema judicial português.

Processo de modernização do sistema judicial português

A modernização é um processo que poderá ter várias perspetivas de análise: a histórica, quando o que se pretende é compreender os ciclos da sociedade; a societal, orientada à perceção de processos de modernização específicos de uma dada sociedade e/ou comunidade; procedimental, quando o que interessa é a perceção da ocorrência de diferentes formas de fazer determinado ato. As perspetivas aqui adotadas são a societal e a procedimental, ainda que, por vezes, se recorra aos contributos da histórica que permitam melhor entender o que é a modernização.

Assim, de acordo com Martinelli (2005),

By modernization we mean the sum of the processes of large-scale change through which a certain society tends to acquire the economic, political, social and cultural characteristics considered typical of modernity. [...] More generally, it was used as a means of describing and legitimizing new institutions, new legal rules, or new scholarly assumptions (Martinelli, 2005, p. 5).

Como se percebe pela segunda parte da afirmação, sobretudo, o novo, a inovação, a rutura com o passado está bastante presente (Martinelli, 2005, p. 7), mas o passado não perde importância. Aliás, a pertinência do entendimento do que é moderno só existe porque se estabelece um contraponto com o que era feito antes, com os modos, os procedimentos e a evolução que ocorreu em comparação com momentos anteriores a este que se estão a analisar. E esse entendimento poderá ajudar a compreender o futuro e até a delinear novos caminhos possíveis.

Para Martinelli (2005), bem como para Smith (2003), há aspetos essenciais que se encontram sempre quando se estão a analisar processos de modernização ao longo da história, são eles o

desenvolvimento da ciência e da tecnologia; que, por sua vez, contribuem para a industrialização, mas sendo esta também causa da modernização; a interdependência entre os diferentes Estados-Nação (resultado da globalização e, no caso europeu, da pertença a uma UE); a constante procura pela especialização e pela diferenciação das funções; o aumento da ocorrência de situações de mobilidade social, aqui mais ao nível do sistema de classes (cada vez mais difuso); o desenvolvimento político; a secularização; o desenvolvimento de novos valores, como o individualismo, o racionalismo e o utilitarismo (ou, pelo menos, a sua enfatização); o aumento exponencial dos meios urbanos; a privatização da vida familiar; a democratização da educação, mas, ao mesmo tempo, de uma cultura de massas e de consumo massificado; o desenvolvimento de meios de comunicação, que permitem encurtar distâncias entre pessoas e territórios; e a compressão do tempo e do espaço (Martinelli, 2005, p. 10).

Estas características estão interligadas, de modo até bastante intrincado. E revelam-se pertinentes quer para a análise dos processos de modernização históricos (como foi o caso), mas, igualmente, a uma dimensão específica, como o sistema judicial português, que se vê fortemente influenciado por todas estas características de modernização. Senão, veja-se a título de exemplo, o desenvolvimento da ciência e da tecnologia para a informatização de processos e de alguns procedimentos; a forma como a pertença à UE regula atos do sistema judicial português, em aspetos como a desburocratização dos processos, a celeridade exigida às respostas; a privatização da vida familiar, com tribunais da especialidade, entre outros.

Para Apter (1965), este processo de modernização foi sendo gradual, primeiro assistiu-se ao declínio do tradicionalismo, depois ocorreu a passagem para a industrialização e, finalmente, deu-se a modernização. O autor considera que estas três etapas foram sendo contínuas, não havendo, por isso, uma rutura visível ou claramente cognoscível. Mas, ainda de acordo com Apter, para que este processo se entenda, será necessário considerar três dimensões de análise: a primeira é a normativa, que define que valores orientam que condutas em cada um dos momentos; a segunda é a estrutural, ou seja, a responsável por limitar o campo de ação de cada um dos atores em causa; finalmente, a terceira é a comportamental, que inclui as motivações e escolhas dos atores.

Tal como Apter, Silva (2013) apresenta, igualmente, uma definição de modernização como sendo um conceito em dicotomia com o de tradição, mas em que um e outro se complementam, referindo que

Modernization is a process of political, social, economic, and cultural change as countries move differentiated and complex forms of social and political organization. [...] An evolutionary process that follows certain laws or, at least, discernible general patterns of development connects these two types of social structure. (Silva, 2013, p. 560).

Ainda que se compreenda que as análises de Apter (1965) e Silva (2013) ajudam no entendimento do processo de mudança das sociedades (macroanálise) ou dos processos (microanálise), o que se assiste é, ainda, à existência de valores tradicionalistas e de enquadramentos tradicionalistas na definição de políticas públicas, por exemplo. Aliás, ainda que a evolução se faça em sentido montante-jusante na maioria das vezes, também é visível a existência

de momentos de retrocesso, não assumindo este a conotação negativa que lhe está associada, mas sim, como a necessidade de recorrer a determinadas características, procedimentos ou até normas tradicionais. Como dizia Martinelli (2005), será a conjugação entre passado (tradição) e presente que permitirá alcançar o futuro. Considera-se, ainda, que a industrialização, mais do que uma era societal, é um processo que tem implicações a vários níveis, nomeadamente, com o desenvolvimento tecnológico e científico constante. Estas dinâmicas (tradicionalismo e industrialização) contribuem para a construção da modernização.

Para além disso, nas dimensões de análise de Apter, será pertinente acrescentar a dimensão funcional, com o carácter de especialização e de funções desempenhadas, que tem implicações na estrutural e na comportamental. Mas, igualmente, acrescentar a dimensão dos atores em concreto, que combina a dimensão funcional e a comportamental, uma vez que é através destes que, recorrendo à dimensão estrutural e à tecnologia existente em cada estrutura, ocorre a modernização. Como também explica Smith (2003), "Social structures are sets of roles performed by individual members of the set. Roles are distinguished from persons. When roles are performed in a particular set they constitute a social structure. Individuals thus make up numerous different structures." (Smith, 2003, p. 51).

Mais uma vez se recorre a Martinelli para evidenciar este aspeto, que refere como atores os empreendedores, os líderes políticos nacionais, os intelectuais/académicos, mas também o poder militar, com as suas formas de organização, os seus instrumentos tecnológicos e os procedimentos que desenvolvem, contribuem para a ocorrência de processos de modernização (Martinelli, 2005, p. 52). No caso concreto do sistema judicial português, estes atores serão os elencados no subcapítulo anterior – magistrados, agentes dos órgãos de polícia criminal, advogados, notários, entre todos os outros.

Smith (2003) faz um paralelismo entre a modernização e os processos evolutivos nos organismos biológicos. Considera o autor que, assim como nestes organismos, também as sociedades se transformam, aumentam ou reduzem de dimensão, constroem novos atributos. Isto exige adaptação, que se faz em momentos alternativos entre estabilidade, continuidade e rutura, recomeço. Adicionalmente, ocorrem fases de interdependência e equilíbrio, ou seja, apesar de existir uma grande relação entre todos os organismos sociais, o que provoca que, ocorrendo mudança em um, tal influencie outro; todos eles procuram o equilíbrio e será tendente ao equilíbrio que todos se movem. O mesmo se verifica relativamente ao desenvolvimento político (Smith, 2003, pp. 50-51).

No âmbito da presente tese de doutoramento, esta visão ganha especial relevância, uma vez que se considera que o sistema judicial (a sua organização e funcionamento) se trata de uma política pública, um conjunto de estruturas inter-relacionadas, com várias funções, vários atores, com o objetivo último (e o mais relevante) de manter a ordem, com o poder de o fazer de forma coativa e coerciva, mas também estando em constante evolução, fruto da exigência da mudança societal. Ou seja, assume um carácter evolutivo, adaptativo, garantindo estabilidade e equilíbrio (ou espera-se que assim o faça), interdependente de outros sistemas sociais (Smith, 2003, p. 54).

Posto isto, de acordo com Edoardo Ongaro (2009), será pertinente ter presentes algumas características do sistema político-administrativo português que contribuem para a sua modernização mais ou menos célere, mais ou menos acentuada. O autor analisou nove características: (1) o sistema de partidos e a relação entre poder legislativo e as legislaturas; (2) o serviço público/civil: conceção e o papel dos sindicatos; (3) inter-relações entre as carreiras dos políticos e burocratas e a politização dos cargos de topo; (4) clientelismo e a politização da base; (5) proveniência geográfica dos funcionários públicos; (6) quadro regulamentar comum de tarefas e atividades e seleção de pessoal; (7) legalismo; (8) sociedade civil e (9) fontes de conselho em políticas públicas relativamente à reforma administrativa.

Portugal aparece caracterizado como (1) um sistema de múltiplos partidos políticos e de organização de convenções maioritárias de governança, com um governo forte quando frente-a-frente com a necessidade de legislar; (2) a função pública assume um papel de política de emprego, o que contribui para o aumento do tamanho do setor público, contrariando a tendência global. Os sindicatos assumem também um papel significativo na política pública de emprego; (3) dimensão acentuada da politização no topo, ainda que com carreiras relativamente distintas; (4) difusão de práticas de clientelismo; (5) a proveniência geográfica dos funcionários públicos é uniforme; (6) existência de um forte quadro regulamentar e abolição da figura do prefeito; (7) centralidade da Lei administrativa; (8) fraca sociedade civil; (9) fontes de conselho em políticas públicas são, historicamente, maioritariamente internas, com o aumento da abertura a momentos de reflexão internacionais e à academia (Ongaro, 2009, pp. 215-219).

Todas estas características, no entender do autor, contribuem para que as dimensões da Nova Gestão Pública se encontrem minadas, nomeadamente, as relativas à eficiência, transparência, proximidade ao cidadão, inovação. Sendo, ainda, bastante visíveis os valores do tradicionalismo, como o peso elevado do emprego no setor público. Mais ainda quando o sistema político-administrativo assenta as suas bases em princípios gerais, atribuindo um peso elevado à Lei, sobretudo, porque o processo de modernização se faz recorrendo a esta ou tendo-a como base, o que se traduz em processos de reforma mais lentos. Mais lentos ainda quando o que se vê acontecer é a soberania da Lei nas sentenças dos Tribunais (ao contrário de sistemas em que as sentenças são, muitas vezes, aplicadas ao caso concreto, portanto, mais ágeis e flexíveis, mas garantindo o valor maior da Justiça) (Ongaro, 2009).

Todos estes fatores e dimensões levam à referência da inovação, sendo esta, como se viu anteriormente, uma das dimensões da modernização. A inovação ou os processos inovadores implementados ao nível da organização de qualquer sistema, método ou procedimento, seja ao nível de qualquer setor (público, privado, social, académico) ou área de produção (indústria, serviços, ...) implicam sempre uma adaptação. E esta adaptação pode mesmo ser constante e frequente, pois, como refere Dan Andrei (2019), "The innovation has a character of permanent change, which aims to adapt variables, determinants in order to achieve the success of competitive strategies." (Dan Andrei, 2019, p. 386).

Talvez pela sua característica de permanente evolução e mudança, o conceito de inovação encontra-se, não raras vezes, associado ao de empreendedorismo (Schumpeter, 1949; Toivonen, 2016). De facto,

[...] a inovação é uma [e apenas uma] das componentes do Empreendedorismo [...] que pode valer por si própria [ou não] quando alguma das componentes da solução é isso mesmo, inovadora, seja o processo, o resultado, os intervenientes, a abordagem ao problema ou mesmo o próprio problema. É inovadora porque é nova e diferente em qualquer um dos aspetos mencionados ou noutros. (Melro & Oliveira, 2017, p. 544).

A acrescentar aos passos que Seth Godin identificou no processo de inovação – geração de ideias a partir de necessidades insatisfeitas; desenvolvimento de protótipos e pilotos; avaliação dos pilotos; e avaliação, aprendizagem e evolução –, Gutiérrez e Stevanato (2020) identificam três características no processo de inovação social (este que, segundo os autores, é o que identifica o fenómeno da inovação aplicado às políticas públicas), são elas: carácter interativo, uma vez que os resultados alcançados são reflexo da interação entre os atores e do ambiente em que essa interação ocorre; o fim último do processo de inovação que é a inclusão social, o empoderamento dos setores vulneráveis e a solidariedade e; o facto de o processo de inovação surgir do conflito e de mecanismos de crise e recuperação, geradores de oportunidades à microescala, que podem, depois, conduzir ao desenvolvimento de estratégias criativas a nível mais amplo.

Embora se concorde com a primeira e a terceira característica. Não se concorda com a segunda, uma vez que, em políticas públicas, nem sempre as finalidades serão as apontadas pelos autores, pois trata-se de um espaço amplo e complexo, no qual podem surgir múltiplos outros objetivos, nomeadamente, externalidades não consideradas.

Assim, para efeitos da presente investigação, a inovação é o processo através do qual se integram novos elementos (que podem ser os referidos na citação anterior e/ou outros) ao longo da cadeia de decisão e de implementação do sistema judicial, este perfeccionado enquanto política pública. Processo, porque se considera que não é algo que se determine realizar no início da sua implementação, mas sim que vai sendo possível integrar à medida do que vão sendo as necessidades em termos de alteração e adaptação às exigências.

Aliado ao conceito de inovação, e como contraponto, surge o de tradição. Ou seja, modos de fazer tradicionais, ligados à história, aos usos e costumes. Aqui, como será compreensível, a opção é manter o sistema judicial ligado ao que tem sido a sua característica fundadora, quase numa perspectiva conservadora de implementação das soluções judiciais⁸.

Pode dizer-se que o sistema judicial, como se conhece hoje (a separação de poderes e a organização funcional), tem as suas raízes no século XVI. Foi, sobretudo, nesta altura que se deu a criação da maior parte dos Tribunais, com a separação, mesmo dentro destes, do tipo de decisões

⁸ Por soluções judiciais entendem-se as soluções oferecidas pelo sistema no seu todo, oferecidas enquanto política pública. Aliás, o conceito de sistema judicial é entendido numa perspetiva global, de integrar não apenas os Tribunais, as suas decisões e o seu corpo de recursos humanos e materiais; mas, igualmente, todos os processos, procedimentos e a sua organização estruturo-funcional.

que era necessário efetivar. Já neste período, mas mesmo muito antes dele, o objetivo era resolver os problemas que ocorriam entre particulares, sobretudo, nos atos de comércio. Ou seja, foi uma política pública que tinha como objetivo concreto impactar na vida comercial e dos atores envolvidos. A evolução do sistema judicial português culminou, já na década de 30 do século XIX, com a criação do Supremo Tribunal de Justiça⁹.

Parte-se, então, da inovação e da tradição, entendidas não como polos, mas como necessariamente aliados num sistema que se entende como conjugando soluções, por um lado, alicerçadas nos séculos de história que não se podem olvidar e, por outro lado, adaptadas e dando resposta às exigências sociais do século XXI.

Um sistema tem como definição mais imediata um “conjunto composto de várias partes”¹⁰. É uma definição bastante simplista, que quase nada oferece. Mas o que se pretendeu foi, precisamente, mostrar, desde já, que o sistema judicial aqui em estudo foi analisado em todas as suas componentes – humanas (com os recursos elencados no subcapítulo anterior), materiais (considerando a organização judicial no seu todo e as suas interligações), funcionais e estruturais. Estas são as partes do conjunto.

O sistema judicial foi, então, analisado e perspectivado como política pública, como uma solução holística, com impacto na vida dos indivíduos e na gestão da sociedade. Uma política, porque é oferecida enquanto forma de resolução de problemas, num conjunto agregado de soluções, que estão presentes desde o nascimento do indivíduo (e das empresas), contemplam as suas relações sociais ao longo da vida e terminam com a sua morte. Pública, porque são soluções maioritariamente oferecidas pelo Estado. Ademais, um sistema que influencia políticas públicas, tomando, direta (através do Tribunal Constitucional, por exemplo) ou indiretamente, decisões sobre políticas públicas (Tavares, 2019, p. 23).

Mas o que motiva a modernização do sistema judicial? E como poderão ser caracterizados os processos de modernização? Pedroso, Trincão e Dias (2003) identificam como objetivo geral para a aplicação de processos de modernização e reforma no sistema judicial a tentativa de evitar que este atinja o momento de rutura. Os mesmos autores enquadraram as reformas ocorridas em Portugal em quatro tipos:

1. Reforma de recursos, essencialmente, humanos. Neste tipo, os governos optam por aumentar o número de colaboradores do sistema judicial;
2. Reforma de gestão, otimizando as decisões de gestão, tornando o serviço mais expedito;
3. Reforma de inovação e tecnologia, por via da qual o sistema judicial vê os seus recursos materiais serem melhorados e indo ao encontro do que são as mais recentes evoluções e soluções tecnológicas;

⁹ www.stj.pt, consultado a 20 de março de 2020.

¹⁰ <https://dicionario.priberam.org/>, consultado a 20 de março de 2020.

4. Reforma de administração da justiça, nomeadamente, por via da criação e da oferta de soluções alternativas de resolução de litígios, bastante mais expeditas e flexíveis. (Pedroso et al., 2003, p. 25).

Boaventura de Sousa Santos (1982) tinha já identificado esta crise (ou rutura) do sistema judicial como motivadora dos processos de reforma. Para o autor, considerando a crise que se verificava, apenas reformas profundas de índole qualitativa ao funcionamento do sistema judicial poderiam ser a solução. Com efeito, foram apontados dois tipos de reformas: a primeira das quais seria relativa à “conceção e gestão do sistema judicial” (Santos, 1982, p. 10). Esta far-se-ia através da introdução de técnicas inovadoras, que facilitassem a automatização e a rotinização de procedimentos e que apoiassem a previsão e o planeamento. Mais ainda, seriam introduzidos novos perfis profissionais e procedimentos de centralização de processos. Ocorreria, então, uma “administração tecnocrática da justiça”. (Santos, 1982, pp. 10-11).

O segundo tipo de reformas do sistema judicial estaria focado em torná-lo mais rápido, barato e acessível, através de processos de descentralização, desprofissionalização e informais. Era o que se designava de “informalização ou deslegalização da justiça” (Santos, 1982, p. 11).

Já por esta altura, o autor considerava que os dois tipos de reformas anteriormente descritos se apresentavam como as duas faces da mesma moeda, conjugando-se e articulando-se nos processos de modernização que tivessem lugar.

Do mesmo modo, ainda que aplicado à administração pública como um todo, Fonseca e Carapeto (2009) apontam alguns momentos-chave em termos de modernização, em Portugal, sobretudo a partir de 1986. Objetivos centrais como eficiência, eficácia, desburocratização, racionalização e simplificação deveriam ser a pedra de toque de uma administração acabada de integrar a União. Acreditava-se que estes objetivos iriam promover a proximidade ao cidadão, a transparência e a disciplina, tal como o que se procura e enfatiza atualmente.

No entanto, ao contrário do que foram as políticas públicas mais atuais ligadas ao sistema judicial português (com grande destaque os programas de reforma da justiça de 2016), não havia espaço para um envolvimento dos funcionários na reforma da administração pública de final da década de 80 (Fonseca & Carapeto, 2009, pp. 84-85).

A agilização, simplificação e desburocratização ganharam forma quando, em 2006, surgem projetos como “*Empresa na Hora*” e “*Marca na Hora*” e é, igualmente, a partir, sobretudo, desta altura que se atribui relevância crescente às tecnologias de informação e comunicação e ao papel que poderão ter no cumprimento dos objetivos anteriormente enunciados. Ao mesmo tempo, é dada preponderância às competências infocomunicacionais (Borges, Bezerra, Diomondes, & Coutinho, 2013; Borges & Oliveira, 2011), inicialmente, dos funcionários da administração pública e, posteriormente, dos cidadãos.

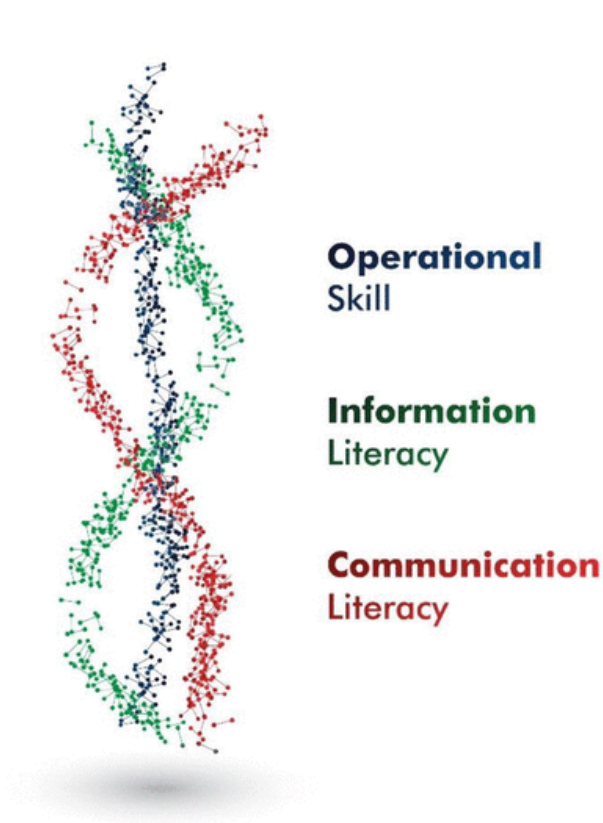
O conceito de competências infocomunicacionais é definido pelos autores como

a convergência de conhecimentos, habilidades e atitudes que possibilitam agir adequadamente em ambientes digitais, mobilizar seus recursos e novos contactos, articulando-os para a

produção de significado e conhecimento, tendo por base preceitos legais e éticos. (Borges & Oliveira, 2011, p. 321).

Assim, para Borges (2022), as competências infocomunicacionais apresentam, necessariamente, três componentes: habilidade operacional, literacia de informação e literacia comunicacional. As três componentes interligadas como figuram de seguida:

Figura 3. Representação da literacia infocomunicacional



Fonte: Borges (2022, p. 3)

Por habilidade operacional, a autora entende a utilização de aplicações, ferramentas e sistemas. Na literacia de informação inclui a capacidade de pesquisa, avaliação e utilização e, finalmente, por literacia de comunicação entende a capacidade de interagir com pessoas, de modo a trocar, discutir, participar, aprender e gerar conhecimento em colaboração (Borges, 2022, p. 3).

Assim, e terminando com uma adaptação das palavras de Fonseca e Carapeto (2009) ao sistema judicial português, o processo de modernização deste sistema deverá incluir a compreensão e o conhecimento por parte dos funcionários (e, acrescenta-se, dos cidadãos) relativamente à utilização e potencialidades nas tecnologias de informação e comunicação, envolvê-los ativamente no processo, de modo que sejam compreensíveis e cognoscíveis. E, desde o Programa de

Reestruturação da Administração Central do Estado (PRACE), em 2006, que esse tem sido o caminho adotado (Fonseca & Carapeto, 2009, p. 88).

Motivações para o estudo

Os motivos para o desenvolvimento deste estudo são de ordem pessoal, profissional e académica. De ordem pessoal pelo interesse que existe em conhecer melhor o sistema judicial e a implementação da Justiça em Portugal, em todas as suas vertentes. A forma como os diversos departamentos e setores pertencentes ao sistema judicial se desenvolvem e ao seu trabalho de forma necessariamente intrincada. Se se parar para refletir sobre todas as dimensões envolvidas quando se fala em sistema judicial, percebe-se que é dos mais complexos que existem na sociedade – envolve as forças policiais, os serviços de registo, os tribunais, a medicina legal, a segurança social e a educação.

Ademais, (a par com a Saúde) é um sistema que, para quase todos os atos aí desenvolvidos, implica estar a lidar com aspetos vulneráveis do cidadão (normalmente, quem procura o sistema judicial está numa situação que pretende resolver ou precisa de alguma certidão para comprovar uma esfera da sua vida).

Estas complexidade e necessidade de dar resposta atempada a situações sensíveis foram motivações para o seu estudo e compreensão, em específico, entender o seu funcionamento, influências internas e externas e, eventualmente, qual o desenvolvimento futuro.

As motivações de ordem profissional estão relacionadas com a vontade de prosseguir investigação em Políticas Públicas, aliada ao Direito. Nomeadamente, a definição e propositura de políticas públicas em diversas áreas, com o intuito de contribuir para o desenvolvimento de políticas legislativas na área dos Direitos Humanos.

Finalmente, os motivos de ordem académica e científica estão relacionados com a possibilidade de aliar diferentes áreas de conhecimento científico num mesmo trabalho de investigação, que se concilia, ainda, com o que tem sido o percurso académico da candidata: Sociologia, como formação de base; Doutoramento em Informação e Comunicação em Plataformas Digitais, como complemento de formação e área de realização de investigação nos últimos 10 anos; e Direito, como área de especialidade mais recente.

Contributos e elementos de inovação da investigação

O presente trabalho de investigação é o culminar de um projeto que teve início no 2.º semestre do 1.º ano do Programa Doutoral em Políticas Públicas. Já nessa altura houve o cuidado de escrever e publicar o primeiro artigo que faz parte do conjunto de trabalhos aqui apresentados (*“Sistema judicial português como política pública. Motivos e fundamentações”*), precisamente, com o propósito de traçar o que seria o ponto de partida da investigação e a linha teórica que a conduziria. Assim, este é o primeiro elemento inovador que o trabalho traz, o facto de considerar o sistema judicial como uma política pública, devidamente justificado e fundamentado nesse artigo.

Considerar o sistema judicial português como um todo para ser o objeto de estudo da investigação, embora seja complexo, é um desafio, mas também uma inovação. O que, frequentemente, se opta por estudar é uma das entidades que compõem esse sistema – sejam as forças policiais, os tribunais, o acesso à Justiça, entre outros. Mas o que se pretendeu no caso concreto foi, precisamente, o de considerar essa complexidade inerente e optar por, no final, perceber de que modo as realidades se cruzam e tocam e como se opera até a comunicação (a existir) entre as várias entidades. Investigar este todo complexo do sistema judicial foi, por isso, outra das inovações.

Esse estudo não se poderia fazer sem ter também em consideração várias áreas do conhecimento, até pela sua implicação nessas mesmas áreas e, ao mesmo tempo, pela necessária relação que as áreas científicas têm com o objeto de estudo e entre si. Assim, a área central é a das Políticas Públicas, mas são implicadas a Sociologia, o Direito e as Ciências da Comunicação. Esta última com um enfoque muito grande considerando um dos aspetos relevantes, que é o papel da utilização de Tecnologias de Informação e Comunicação na modernização e na inovação do sistema judicial. Estas inter e pluridisciplinaridade estiveram presentes desde o primeiro artigo científico e norteiam a investigação, conferindo-lhe um carácter inovador.

Nesta linha de raciocínio, também em termos de métodos e técnicas selecionadas para a realização do estudo, importa ter em consideração que, dada a complexidade inerente, que já se referiu, seria relevante considerar um desenho de investigação que permitisse aprofundar o mais possível (dentro de todos os constrangimentos temporais, financeiros, humanos, etc.) o objeto de estudo e a sua compreensão. Posto isto, houve a opção pela triangulação: análise documental de documentos oficiais, entrevistas exploratórias semiestruturadas a atores-chave localizados ao nível da definição de políticas públicas e entrevistas semiestruturadas a atores-chave localizados ao nível da implementação de políticas públicas.

Finalmente, em termos de processo de realização da tese, ao longo da investigação desenvolvida, houve vários fatores críticos que tiveram que se ter em consideração e contornar. Um deles (e bastante mais premente do que o que se pensaria *ab initio*) foi a pandemia COVID-19. Sem querer deter muito tempo sobre este assunto, apenas referir que a inovação que esteve presente relacionada com este aspeto foi a forma de fazer investigação. Não é inovador aplicar entrevistas utilizando plataformas de videochamada. Mas é inovador que todas as entrevistas se realizem desse

modo, que os consentimentos informados sejam facultados digitalmente, que as entrevistas ocorram sem os imprevistos inerentes à utilização de redes de Internet, que podem falhar a qualquer momento, que haja uma disponibilidade total por parte dos entrevistados para estarem presentes por uma ou duas horas *online*, porque é dessa forma que a vida decorre.

No que diz respeito aos contributos inovadores para a ciência em termos de conclusões retiradas do estudo realizado, não querendo antecipar as principais conclusões, que serão alvo de escrutínio em momento próprio, pode, desde já, referir-se que um dos contributos foi a possibilidade de elaborar uma análise ao longo de um horizonte temporal bastante alargado (1976 e 2019) relativamente a documentos oficiais do Governo português, nomeadamente, os Programas dos diferentes Governos, seguindo critérios orientadores de análise da modernização definidos por Martinelli (2005), mas numa versão revista e aumentada, de modo a incluir uma análise o mais completa possível (que resultou na redação de um artigo científico a aguardar decisão editorial – Anexo 6).

Dessa análise documental foi possível extrair a exigência de modernização do sistema judicial que sempre esteve presente. De facto, quer ao nível de inovação e modernização dos códigos legislativos, quer das forças policiais, da interoperabilidade do sistema, ao nível da formação dos atores das mais variadas funções e, claro, da introdução de tecnologias de informação e comunicação, desde o primeiro documento analisado que se verifica estar presente uma necessidade de inovar.

De seguida, através da análise das entrevistas realizadas conclui-se, desde logo, que há um hiato entre o que são políticas e projetos enunciados como importantes no papel para essa inovação e modernização e a sua efetiva operacionalização. Ou mesmo quando os projetos são, efetivamente, implementados, esse hiato, por vezes, persiste, mas no que diz respeito entre o que foi equacionado no papel e o que depois é transposto para a realidade, não raramente porque faltam estudos prévios para aferir das necessidades dos atores-chave posicionados ao nível da implementação das políticas públicas.

Também extraída das entrevistas foi a conclusão relativamente à influência da adesão de Portugal à União Europeia, já referida por via dos contributos do estado da arte. Mas aqui confirmada pelo trabalho desenvolvido no território pelos entrevistados. Desde as mais pequenas tarefas, às que requerem o recurso a legislação para a sua fundamentação, a influência da UE é uma evidência e está cada vez mais presente. Quer a montante, quer a jusante depois com as avaliações de impacto (relatórios estatísticos).

Outra conclusão foi a da relevância das Tecnologias de Informação e Comunicação (TIC), quer no momento de definir projetos para o sistema judicial, quer no momento de os implementar. E, aliado a estas, estão (ou deveriam estar) as competências infocomunicacionais dos atores-chave. Assim, se, por um lado, é reconhecida pelos entrevistados aquela relevância. Por outro lado, também é referido que nem sempre as infraestruturas existentes se coadunam com o desenvolvimento tecnológico de determinados projetos; que nem todos os projetos têm aplicação por não responderem às efetivas necessidades do cidadão ou dos próprios atores-chave para o desenvolvimento do seu trabalho; que

a maior parte dos projetos desenvolvidos nos últimos anos, com uma componente elevada de TIC (Programas *Justiça + Próxima* e *Simplex*, por exemplo), contribuíram para uma melhoria significativa do trabalho e para ganhos de eficiência, de proximidade com o cidadão e de transparência; e, finalmente, que apostar nas competências infocomunicacionais deverá ser o ponto de partida para a transformação que se quer operar no sistema judicial português em termos de avanço tecnológico, tendo a pandemia COVID-19 sido evidência deste facto.

Finalmente, em termos de contributo inovador, traçaram-se o que foram os principais desafios apontados pelos entrevistados, que se situavam quer ao nível da definição das políticas públicas, quer ao nível da sua implementação. O objetivo foi fazer uma análise sobre o que se consideraram ser aspetos que necessitam de maior desenvolvimento e/ou os que ao longo dos anos se têm verificado como mais exigentes em termos de impacto produzido no seu trabalho. O resultado está apresentado nos artigos 4 e 5 (Anexo 5).

Ainda que se considere que o saldo é positivo em termos de contributos científicos trazidos com a investigação desenvolvida, não pode deixar de se referir que seria relevante, para um entendimento holístico das questões aqui tratadas, ouvir os cidadãos que recorrem ao sistema judicial para resolução dos seus assuntos e problemas. Perceber se e como percebem as inovações introduzidas; que impacto tiveram nas suas vidas e; o que consideram que ainda pode ser melhorado e porquê.

Ademais, seria, ainda, uma mais-valia para o entendimento do sistema judicial português, a realização de uma investigação mais aprofundada em relação aos seus diferentes serviços. Sugere-se que se aborde cada um deles de modo individualizado, mas, como se disse, aprofundado, considerando, igualmente, a interoperabilidade inerente. Para o efeito, seria necessário que o estudo dispusesse de tempo, recursos humanos e materiais, de que não é possível dispor num projeto da natureza de um doutoramento.

A presente investigação foi relevante a vários níveis. Porque se partiu do pressuposto que o sistema judicial, em todas as vertentes da sua implementação e organização, é uma política pública, tendo, inclusivamente, influência e impacto na vida das pessoas e da sociedade como um todo. Tendo como objetivo final resolver um problema dos cidadãos e fazer funcionar a sociedade. Compreende-se, no entanto, que se trata de uma macropolítica pública, na medida em que engloba várias micro dimensões e políticas.

Tal como a Educação, a Saúde, o Estado-Providência, a Defesa e as mais diversas áreas de atuação do Estado, defende-se que também a Justiça (não no sentido de implementação de soluções justas, mas sim no de colocar ao alcance dos cidadãos o sistema judicial de resolução de litígios e de oferta de serviços jurídicos) é uma macropolítica pública. Se a Educação se subdivide depois em micropolíticas, como a escolaridade mínima obrigatória, a colocação à disposição de alunos e docentes de computadores e a tecnologização do ensino, com a instalação de quadros interativos nas escolas, por exemplo; também na Saúde a existência de micropolíticas se verifica, como a redução das taxas moderadoras, as medidas de redução das listas de espera em determinadas

especialidades médicas; e os mesmos exemplos se poderiam dar para todas as outras áreas que atuação do Estado. E o mesmo se considera que acontece na Justiça/no sistema judicial.

Limitações e constrangimentos da investigação

A concretização de trabalhos de investigação na área das Ciências Sociais, por regra, não se faz sem recurso à intervenção de pessoas. Seja porque delas depende a implementação do trabalho, seja porque delas depende a obtenção de dados empíricos. No caso concreto da presente investigação, o facto de muito do trabalho desenvolvido se fazer com recurso à aplicação de entrevistas, tornou-a muito dependente da disponibilidade dos entrevistados em participarem.

Estavam em causa duas fases de entrevistas semiestruturadas. Numa primeira fase, com a participação de decisores de Políticas Públicas, nomeadamente, do sistema judicial. Entrevistados posicionados num nível de grande exigência e escrutínio público e de elevada responsabilidade em termos de definição de Políticas Públicas.

Numa segunda fase, contava-se com a disponibilidade de atores posicionados ao nível da implementação dessas mesmas políticas, ou seja, nos mais diversificados serviços do sistema judicial, responsáveis por, no terreno, concretizar os projetos definidos pelos decisores referidos anteriormente.

Em ambas as fases, a maior limitação foi no estabelecimento do primeiro contacto para o agendamento das entrevistas. Assim, o que se verificou foi que se revestiu de maior dificuldade encetar os primeiros contactos que permitiam iniciar as entrevistas. Uma vez ultrapassado este constrangimento, esta etapa metodológica decorreu sem problemas a assinalar. Aliás, após o final de cada entrevista, era solicitado que indicassem pessoas que estivessem disponíveis para responder e que, na opinião do entrevistado, o seu contributo fosse relevante para a investigação em curso. Quase todos indicaram uma ou várias pessoas. E, confirmada a sua pertinência para a investigação, eram, igualmente, contactadas.

Um aspeto que não pode deixar de se referir está relacionado com a realização da investigação em período de pandemia COVID-19 e, especialmente, por se ter vivenciado, na primeira fase das entrevistas, um período de confinamento. Ainda assim, o acesso a Tecnologias de Informação e Comunicação de ambas as partes, bem como o que já vinha sendo hábito nas comunicações neste contexto, permitiu que todas as entrevistas fossem realizadas sem entraves a assinalar, excetuando-se o facto de terem ocorrido a distância, tendo por intermediário um ecrã, o que, desde logo, retira alguma da espontaneidade e relação criada entre entrevistador e entrevistado.

No que diz respeito à análise documental, a limitação que se poderá referir é a do excesso de documentação oficial existente, quer a que emana do Governo, quer a que tem origem na União Europeia e na Comissão Europeia. Fazer a seleção de quais seriam os documentos mais relevantes

de analisar é sempre algo muito subjetivo e que poderá minar a imparcialidade que se pretende obter da análise realizada. Assim, e porque, maioritariamente, o que estava em causa era verificar a pertinência da modernização do sistema judicial desde 1974 para os sucessivos Governos portugueses, a opção recaiu sobre os Programas dos Governos entre 1976 e 2019.

Finalmente, outro constrangimento a mencionar está relacionado com o formato escolhido para apresentação da tese. Ainda que se trate de uma escolha pessoal (da aluna, com o aconselhamento dos seus orientadores), esta foi realizada com um conhecimento da realidade de publicação e de funcionamento das revistas científicas. No entanto, o que se verificou foi um período temporal bastante maior do que o expectável que mediou entre a submissão dos artigos para revisão por pares e a resposta sobre a aceitação/rejeição dos mesmos. Tal facto atrasou todo o processo de publicação dos artigos, o que resulta em se encontrarem ainda em fase de avaliação três deles. A justificação encontrada para este aspeto está também muito relacionada com a pandemia COVID-19, o que atrasou o processo editorial da maior parte das revistas de cariz científico.

Estrutura do documento

Para terminar a introdução, será pertinente fazer uma apresentação de como se estrutura o documento. Na introdução abordou-se o estado da arte relativamente aos conceitos centrais em desenvolvimento na tese: sistema judicial, modernização, inovação, tradição, nova gestão pública, administração pública, integração na União Europeia, competências infocomunicacionais, entre outros. Este foi um capítulo central e um pouco mais extenso do que o habitual, uma vez que o documento apresenta o conjunto de trabalhos científicos realizados.

De seguida, será descrita em detalhe a metodologia, o desenho de investigação para a recolha de dados. Neste capítulo apresentam-se os objetivos da investigação, bem como as questões de partida. Adicionalmente, serão explicadas as técnicas de recolha de dados e as finalidades com a sua aplicação. Serão, igualmente, explicados os instrumentos de recolha de dados e de análise dos mesmos. Ainda na metodologia, serão apresentados o cronograma, os elementos críticos e as oportunidades para o seu cumprimento.

Posteriormente, os quatro capítulos seguintes são constituídos por cada um dos artigos publicados. O primeiro artigo, intitulado *Sistema judicial português como política pública. Motivos e fundamentações*, foi publicado no volume 6, da Revista Espaço Público. O artigo apresenta os constructos teóricos sobre os quais se debruça a tese de entender o sistema judicial como política pública. Para tal, inicia-se com uma definição de política pública, na qual se encontra o sistema judicial, partindo-se para o que será a formulação e a execução do sistema judicial em termos dos principais modelos teóricos existentes.

O segundo artigo tem como título *Modernization as na enhancer of access to Justice and of proximity between key actors*, e encontra-se publicado no número 1 do volume 14 da *Revista de*

Estudos Constitucionais, Hermenêutica e Teoria do Direito. O artigo analisa as mudanças ocorridas no sistema judicial português, nos últimos 10 anos, considerando a modernização tanto como potenciadora dessa mudança, como sua consequência. Uma das suas principais conclusões é o facto da sociedade e das necessidades dos cidadãos e empresas serem exigência bastante para potenciar a mudança do sistema judicial, procurando a modernização para esse fim.

No artigo são analisados os resultados das entrevistas aplicadas aos decisores de políticas públicas, especificamente, do sistema judicial. Conclui-se que, como fatores de modernização do sistema judicial, são relevantes as tecnologias de informação e comunicação e as competências infocomunicacionais, mas que algumas barreiras também se colocam, como a desmotivação dos recursos humanos.

Dois dimensões mais são, ainda, exploradas nessa abordagem à modernização do sistema judicial: os atores-chave nesse processo e o acesso à justiça.

O terceiro artigo intitula-se *The path to public policies' reform definition. The case of the Portuguese judicial system*, foi publicado no número 11 do volume 2 da *Revista ACERTTE*. Este artigo tem como principal contributo os resultados da análise documental realizada aos Programas do Governo, elaborados entre 1976 e 2019. Para dar o mote a essa análise, o artigo considera diferentes dimensões de modernização e do processo de reforma, nomeadamente, os impulsionadores das reformas, o caminho percorrido ao longo dos anos, os seus momentos-chave, os atores-chave das reformas e os impactos.

O processo de modernização é bastante complexo, seguindo, por vezes, caminhos multifurcados. Para tal, foi essencial elaborar uma breve resenha histórica do processo de modernização do sistema judicial em Portugal, para depois se conseguir entender os momentos altos evidenciados pela análise documental, como, por exemplo, a integração na União Europeia.

A análise documental seguiu os critérios definidos por Martinelli (2005), mas complementada com a proposta teórica de Pedroso, Trincão e Dias (2003) e por uma proposta elaborada no decorrer da presente investigação.

O quarto e último artigo tem como título *Relevant Stages, Actors, and Instruments in the Portuguese Judicial System Modernization Process*, foi publicado no número 1 do volume 6 do *Journal of Public Policy and Administration*. Considerando os princípios basilares do sistema judicial – proximidade, eficiência, eficácia e transparência – o artigo apresenta os resultados alcançados pela aplicação de entrevistas a atores-chave ao nível da definição das políticas públicas, em Portugal. Procede à análise de conteúdo das entrevistas, bem como à sua análise com recurso ao *software NVivo*.

Adicionalmente, após uma breve caracterização histórica dos processos de modernização do sistema judicial português, são apresentadas as principais motivações para a aplicação de processos de modernização, bem como alguns dos principais projetos implementados, recorrendo sempre aos discursos dos entrevistados para corroboração.

Finalmente, são indicados os principais desafios colocados à modernização do sistema judicial português identificados nos discursos dos entrevistados, sendo eles:

- Os períodos de quatro anos (ou menos) das legislaturas;
- As crises;
- A necessidade de responder às exigências da UE;
- A complexidade do sistema judicial e a implementação da interoperabilidade;
- Os atrasos da Justiça;
- O número de recursos humanos do sistema judicial e a sua idade;
- A dificuldade em digitalizar e em desenvolver competências infocomunicacionais.

Ao longo do desenvolvimento da tese de doutoramento foram, ainda, escritos e submetidos a revistas científicas mais três artigos, que estão em fase de avaliação e decisão editorial. Estes documentos, uma vez que são pertinentes para a compreensão de algumas conclusões que serão apresentadas na tese, encontram-se disponíveis nos Anexos 5, 6 e 7.

A tese termina com uma reflexão sobre as principais conclusões retiradas da investigação realizada, pela conjugação dos contributos teóricos do estado da arte com os resultados empíricos. Nas conclusões far-se-ão, igualmente, algumas sugestões de investigação futura.

METODOLOGIA

A investigação de Doutoramento “*As duas faces de Janus da modernização das políticas públicas: inovação e tradição. O caso do sistema judicial português*” foi desenvolvida ao longo dos últimos dois anos (2020/2021 – 2021/2022).

O conceito que mais se destaca é o de modernização, aplicado às políticas públicas e, concretamente, ao sistema judicial português. Assim, interessa perceber como ocorre o processo, quando ocorre, quem e o que está envolvido e porque ocorre. De acordo com Martinelli (2005), há, inclusive, vários critérios a ter em consideração quando se analisam esses processos de modernização, que o autor sistematiza da seguinte forma:

1. A **unidade de análise**, que terá que ter presente (sobretudo pela interdependência entre os diferentes Estados-Nação) os níveis supranacionais, nacionais, regionais e locais.

2. As **características específicas da sociedade** a que se reporta a análise dos processos de modernização, por exemplo, existência ou não de pré-condições ou obstáculos, constrangimentos e oportunidades estruturais e culturais.

3. **Fatores, mecanismos e processos** que ajudam a compreender a transição de procedimentos mais tradicionais, para outros mais modernos, podendo estes ser endógenos ou exógenos ao sistema que se está a estudar, unicausais ou policausais.

4. A **forma, a sequência e a direção** que os processos de modernização assumem, podendo, mais uma vez, ser unidirecionais ou multidirecionais, graduais ou contínuos.

5. As **ocorrências intencionais e previstas** e as não intencionais e não previstas com o processo de modernização. Assim como as características e o número de atores envolvidos.

6. A **duração, as consequências e os resultados** do processo de modernização (Martinelli, 2005, p. 29).

Estes foram, aliás, os critérios utilizados para a análise documental. No entanto, é evidente que, desde os anos 80, sobretudo desde a adesão de Portugal à CEE (atual UE), que o País se revê no modelo da Nova Gestão Pública, concretizando-o através de processos de modernização (Teles, 2020, p. 439). Inclusivamente, esta evidência denota-se, por exemplo, pela criação da Secretaria de Estado da Modernização Administrativa, mas também pela criação, em 1982, do Gabinete de Estudos e Coordenação da Reforma Administrativa (Teles, 2020, p. 444).

Assim, foi pertinente ter em consideração para o desenvolvimento da tese, não só, as perguntas que se pretendia ver respondidas, como os critérios de modernização que seriam orientadores e o período temporal e os momentos-chave que seria relevante evidenciar.

Este capítulo de Metodologia apresenta em detalhe as questões de partida da investigação, assim como os objetivos norteadores de todo o trabalho. Ademais, são explicadas as técnicas de recolha e análise de dados. Considerando a complexidade do objeto de estudo – o sistema judicial português –, foi levado em conta o defendido por Flick (2005), ou seja, adotaram-se métodos o mais abertos possível, de modo que se ajustassem àquela complexidade. Deste modo, foi possível estudar

o objeto na íntegra, procurando documentos oficiais e atores-chave integrados na realidade que se pretendia conhecer (Flick, 2005, p. 5).

O capítulo está organizado em três subcapítulos. No primeiro serão detalhadas as questões de investigação. No segundo serão apresentados os objetivos gerais e específicos. No terceiro será dada ênfase às três técnicas de recolha de dados: análise documental, entrevistas realizadas a atores-chave ao nível da definição de políticas públicas e entrevistas realizadas a atores-chave ao nível da sua implementação.

Relativamente aos resultados alcançados, houve oportunidade de proceder à sua apresentação em formato de artigos científicos, devidamente submetidos a revistas (e à conseqüente apreciação dos pares). Assim, para além dos quatro artigos que compõem o presente documento, foram, ainda, redigidos mais três artigos que aguardam decisão editorial. Esses artigos, devido à sua pertinência para a compreensão do objeto de estudo da tese podem encontrar-se nos Anexos 5, 6 e 7.

Antes de se avançar para a explanação dos tópicos em análise, é importante referir a questões éticas tidas em consideração na aplicação da metodologia. Assim, a todos os participantes nas entrevistas foi previamente explicado o objetivo da investigação, colocado à disposição o consentimento informado (Anexos 1 e 3) para leitura, que foi assinado pelos entrevistados e devolvido. Todas as entrevistas foram gravadas com o consentimento de todos os participantes. E foram transcritas no final para a respetiva análise de conteúdo e tratamento recorrendo ao *software NVivo*.

No que diz respeito aos atores-chave que se encontravam ao nível da definição das políticas públicas, pela relevância da categoria profissional que ocupavam e pelo caráter público dessa categoria, foi autorizada a referência à sua identidade e cargo.

No entanto, em relação aos atores-chave posicionados ao nível da implementação das políticas públicas, foi garantido o anonimato e a confidencialidade dos mesmos, apenas apresentando como dados a categoria profissional e o número de anos que ocupam essa categoria.

A todos os entrevistados foi dada a possibilidade de parar a entrevista sempre que o desejassem, em cumprimento dos princípios éticos e de integridade que as investigações científicas (sobretudo qualitativas) devem assegurar (Yin, 2016, pp. 57-59).

Questões de investigação

A questão de partida de uma investigação, a par com os objetivos, são instrumentos operacionais muito valiosos para qualquer investigação científica, são “frases explícitas sobre o assunto que o investigador pretende saber” (Bryman, 2012, p. 9). Será a partir deles que se delimita o objeto de estudo e até a forma como se delineia o desenho de investigação. Assim, após as primeiras leituras

relativamente aos conceitos (e sua articulação) que interessava investigar, foi elaborada a questão de partida, que se subdivide e especifica depois em outras quatro subquestões. A atenção foi dada à clareza das questões, à sua especificidade e à sua tangibilidade, ou seja, a possibilidade de obtenção de resposta no final da investigação.

Na investigação estão em estudo os processos de modernização das políticas públicas, nomeadamente, do sistema judicial português, dos últimos 34 anos (entre 1986, entrada de Portugal na UE e 2020). A questão de partida a que se pretende responder é a seguinte:

Coexistirão inovação e tradição no sistema judicial português na definição e implementação de processos de modernização, previstos nos últimos 34 anos pelos Governos Constitucionais?

E como subquestões, auxiliares na procura da resposta a esta questão central, a investigação terá as seguintes:

Q1. *Que adaptações foram realizadas pelo sistema judicial português aos processos de modernização?*

Q2. *Quais são os atores-chave nestes processos de modernização?*

Q3. *Qual o papel do legalismo e dos princípios gerais¹?*

Q4. *De que modo se conciliam a tradição e a inovação no processo de modernização do sistema judicial português?*

No fundo, trata-se de seguir os critérios orientadores de análise da modernização, sugeridos por Martinelli (2005), os quais sofreram uma adaptação no sentido da sua ampliação e melhor enquadramento na investigação que se pretendia realizar. O que será explicado em detalhe no subcapítulo dedicado à análise documental.

Objetivos de investigação

Os objetivos da investigação foram os orientadores do seu desenvolvimento, bem como da procura das respostas às questões. Mais uma vez, houve o cuidado de formular objetivos claros, alcançáveis e precisos. Para a condução da investigação, formularam-se três objetivos gerais (mais latos) e dois objetivos específicos.

¹ Legalismo aqui entendido no sentido da produção legal no âmbito da modernização. E princípios gerais entendidos como norteadores da modernização de processos, quer porque emanam de diretivas europeias, quer porque incluídos nos principais documentos legislativos.

Objetivos gerais:

O1. Analisar as estratégias de reforma das políticas públicas portuguesas e comparar com a sua implementação, nos últimos 34 anos.

O2. Compreender o processo de modernização das políticas públicas em Portugal, considerando os critérios de análise definidos por Martinelli.

O3. Compreender o processo de modernização do sistema judicial português nos últimos 34 anos.

Objetivos específicos:

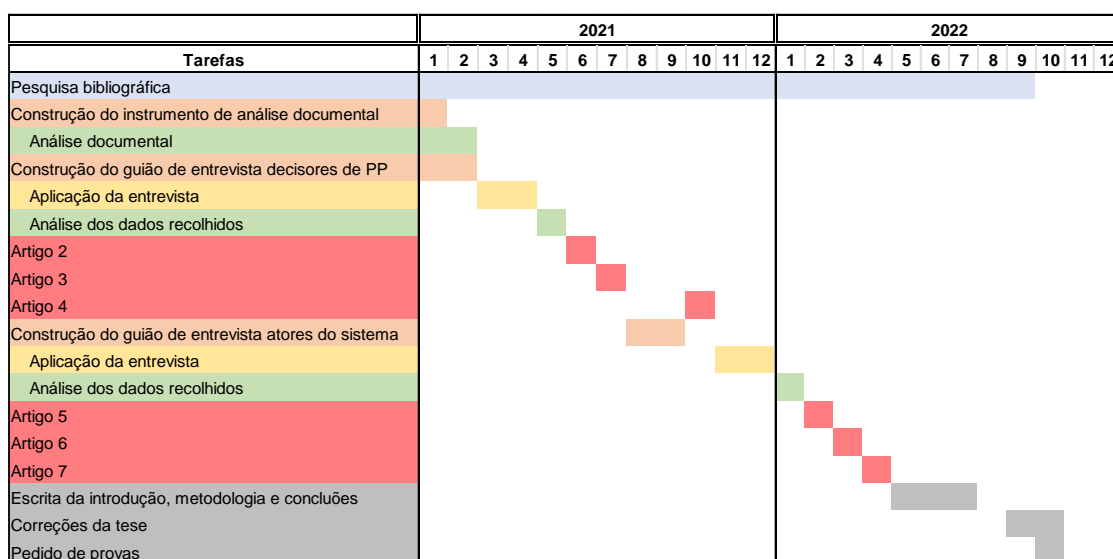
Oa. Analisar a forma como se conciliam inovação e tradição e o papel de uma e outra na implementação de processos de modernização do sistema judicial.

Ob. Compreender o papel dos atores-chave do sistema judicial português no processo de modernização.

Técnicas de recolha e análise de dados

A implementação da investigação compreende a realização de três técnicas, detalhadas de seguida (análise documental e duas fases de entrevistas). Com a sua concretização a ocorrer dentro do cronograma previsto apresentado na Figura 4. Ainda nesta figura aparecem representadas todas as tarefas realizadas ao longo dos dois anos do programa doutoral e que contribuíram para a conclusão e defesa do trabalho.

Figura 4. Cronograma do trabalho de investigação



Não estando incluída naquelas três tarefas referidas, a pesquisa bibliográfica é talvez das mais relevantes em qualquer projeto de investigação. A construção de uma matriz teórica sólida é a alavanca da construção de instrumentos de recolha de dados, também eles robustos. Permite, ainda, garantir que o projeto tem uma linha (ou várias) orientadora que conduz a uma finalidade concreta, sem desvios de maior.

Não obstante, excesso de informação disponível pode transformar-se num risco associado ao projeto. Para que tal não constituísse um entrave, foi relevante considerar esta como uma tarefa que se desenvolveu ao longo de toda a investigação. Assim, durante a realização de todo o plano de trabalhos foi encetada pesquisa bibliográfica nas áreas científicas das Políticas Públicas; Sociologia; Ciências da Informação e da Comunicação; Ciências Jurídicas, entre outras, que se mostraram relevantes para a construção de um quadro teórico e conceptual robusto. Cruzando conceitos como Modernização; Sistema Judicial; Reforma Judicial; Desmaterialização de Processos; Política Pública; Inovação e Tradição.

Esta pesquisa bibliográfica seguiu uma estrutura exploratória, afunilando as pesquisas através de critérios previamente definidos (Bryman, 2012, pp. 98-102). Assim, foram selecionadas as publicações que permitiram ter uma base de dados de referência bibliográfica atualizada, mas, ao mesmo tempo, que permitissem compreender qual tem sido o enfoque dado à análise das políticas públicas e dos processos de modernização nos últimos anos.

Ainda que esta não surja como uma tarefa independente como as que se seguem, foi uma das mais relevantes e que ocorreu ao longo dos dois anos de trabalho.

Como já referido, foram, ainda, aplicadas três técnicas de recolha de dados, detalhadas de seguida. Ao longo dessa exposição, será também explicada a amostra e as opções de análise dos dados recolhidos.

Análise documental

Para dar início a este subcapítulo, convém esclarecer o que se entende por análise documental. Para tal, recorre-se a Junior, Oliveira, Santos, e Schnekenberg (2021), que referem o seguinte,

[...] a pesquisa documental é aquela em que os dados logrados são absolutamente provenientes de documentos, com o propósito de obter informações neles contidos, a fim de compreender um fenómeno; é um procedimento que utiliza de métodos e técnicas de captação, compreensão e análise de um universo de documentos, com bancos de dados que são considerados heterogêneos. (Junior, Oliveira, Santos, & Schnekenberg, 2021, p. 42).

Assim, esta primeira técnica implicou a análise de documentos oficiais do Governo português, nomeadamente, os Programas de cada um dos Governos desde 1976, ou seja, desde o início do período democrático. Assim, foram analisados 22 programas do Governo, produzidos pelos 22

Governos Constitucionais legalmente constituídos, entre os anos de 1976 e 2019 (relativamente a este último ano, o documento analisado apresentava o programa do Governo da legislatura entre 2019 e 2023. Não obstante, houve mudança de legislatura em 2021).

Tabela 1. Listagem dos documentos oficiais alvo de análise

Documento	Ano	Período a que reporta
Programa do I Governo Constitucional	1976	1976-1978
Programa do II Governo Constitucional	1978	1978
Programa do III Governo Constitucional	1978	1978
Programa do IV Governo Constitucional	1978	1978-1979
Programa do V Governo Constitucional	1979	1979-1980
Programa do VI Governo Constitucional	1980	1980-1981
Programa do VII Governo Constitucional	1981	1981
Programa do VIII Governo Constitucional	1981	1981-1983
Programa do IX Governo Constitucional	1983	1983-1985
Programa do X Governo Constitucional	1985	1985-1987
Programa do XI Governo Constitucional	1987	1987-1991
Programa do XII Governo Constitucional	1991	1991-1995
Programa do XIII Governo Constitucional	1995	1995-1999
Programa do XIV Governo Constitucional	1999	1999-2002
Programa do XV Governo Constitucional	2002	2002-2004
Programa do XVI Governo Constitucional	2004	2004-2005
Programa do XVII Governo Constitucional	2005	2005-2009
Programa do XVIII Governo Constitucional	2009	2009-2011
Programa do XIX Governo Constitucional	2011	2011-2015
Programa do XX Governo Constitucional	2015	2015
Programa do XXI Governo Constitucional	2015	2015-2019
Programa do XXII Governo Constitucional	2019	2019-2023

Esta análise foi feita em dois momentos: numa primeira fase foi realizada uma análise à referência à modernização do sistema judicial em cada um dos 22 programas considerando como critérios: (1) período a que o programa dizia respeito; (2) tipos de reformas; (3) as reformas mais teóricas ou de índole mais filosófica; (4) as reformas de índole mais prática (relativas aos processos e aos procedimentos); (5) reformas legislativas; (6) reformas estruturais; e (7) os problemas concretos que as reformas pretendiam resolver. Para cada um dos critérios foram indicadas as reformas específicas que estavam contidas nos documentos analisados.

Em relação à tipologia das reformas/mudanças, foi aplicada a definição e os tipos desenvolvidos por Pedroso, Trincão e Dias (2003, p. 25-26). Todos os outros critérios foram desenvolvidos no decorrer da tese e da análise documental, após uma abordagem preliminar aos documentos.

O ponto de partida para o segundo momento da análise documental foram os critérios definidos por Martinelli (2005) e já previamente elencados: (1) unidade de análise; (2) características da sociedade a que se reporta a análise dos processos de modernização; (3) fatores, mecanismos e processos que auxiliam a transição de procedimentos mais tradicionais, para outros para modernos; (4) forma, sequência e direção dos processos de modernização; (5) ocorrências intencionais e previstas e as não intencionais e não previstas com o processo de modernização; (6) duração, consequências e resultados do processo de modernização (Martinelli, 2005, p. 29).

Os resultados dessas duas análises paralelas e complementares pode ser consultado no Artigo 3, uma vez que resultou num artigo intitulado “*The path to public policies’ reform definition. The case of the Portuguese judicial System*”.

As maiores dificuldades encontradas na realização da análise documental estiveram relacionadas com a escolha dos documentos oficiais, mas, igualmente, com a definição dos critérios para conduzir essa análise.

Em relação à primeira dificuldade, sobretudo, nos últimos 15 anos, tem-se assistido a uma produção massiva de documentos oficiais, sejam nacionais ou europeus, relatórios de previsão, implementação e avaliação. A opção pelos Programas do Governo esteve relacionada com o facto de ser o documento orientador das linhas fundamentais de governação, que era o que se pretendia. Ou seja, era objetivo analisar as estratégias de reforma das políticas públicas portuguesas e estabelecer uma comparação entre os diferentes programas de governo. E, no final, compreender o processo de modernização do sistema judicial português nos últimos 34 anos. São estes os objetivos 1 e 3 do doutoramento. Seria também possível dar resposta às questões 1 e 4: que adaptações foram realizadas pelo sistema judicial português aos processos de modernização (desmaterialização de processos e procedimentos, reorganização geográfica judiciária, redefinição de categorias profissionais, entre outras dimensões)? E de que modo se conciliam a tradição e a inovação no processo de modernização do sistema judicial?

No que diz respeito às dificuldades sentidas relativamente à definição dos critérios para a análise documental, cumpre dizer que encontrar uma base de critérios que se adegue, sem qualquer alteração, ao que se pretende alcançar é quase sempre inglório. Para além do facto de se tratar de uma decisão subjetiva (a do investigador), com todos os cuidados que será necessário ter, é também resumida àqueles critérios e àqueles apenas. Não obstante, considera ter-se conseguido ultrapassar esses obstáculos através da aplicação de duas análises (a de Martinelli e a dos investigadores, com complemento de Pedroso, Trincão e Dias).

Para além disso, concorda-se com Bryman (2012), quando o autor refere que “The issue of representativeness is complicated in that materials like these are in a sense unique, and it is precisely their official or quasi-official character that makes them interesting in their own right.” (Bryman, 2012, p. 550). Assim, embora possa ser considerada uma análise enviesada por apenas ter em consideração Programas do Governo, não deixa de ser de grande relevância a sua análise e até comparação ao longo dos anos para se compreender o que aqui está em discussão: o processo de modernização do sistema judicial.

Entrevistas a Decisores de Políticas Públicas

A opção metodológica para a recolha de dados empíricos foi a da realização de entrevista. Optou-se pela entrevista, porque permite colocar questões mais abertas e outras mais fechadas, focando na temática pretendida, mas dando alguma margem de liberdade aos entrevistados para responderem às perguntas colocadas.

As entrevistas realizadas dividem-se em duas fases. Num primeiro momento, realizaram-se entrevistas a atores-chave colocados ao nível da definição de políticas públicas. Num segundo momento, os entrevistados eram já atores-chave que se encontravam situados ao nível da implementação das políticas públicas. Assim, se os primeiros tinham como experiência relevante para a compreensão do objeto de estudo toda a fase a montante da reflexão e construção de projetos concretos para integrarem e modernizarem o sistema judicial. Os segundos auxiliaram na compreensão da adaptação dos projetos desenvolvidos ao terreno concreto em que trabalhavam.

Vários aspetos a ter em conta no primeiro grupo de entrevistas em particular. O primeiro dos quais é o facto de estas entrevistas não estarem previstas aquando da escrita do projeto de tese de doutoramento. Inicialmente, apenas se tinha como técnicas de recolha de dados a análise documental e as entrevistas a implementadores. No entanto, após o que foi a aquisição de conhecimento teórico sobre os tópicos aqui em discussão, mostrou-se pertinente incluir aquele conjunto de entrevistas.

Estas entrevistas integram o que Flick (2005) designa de entrevistas semiestruturadas, especificamente, as entrevistas a especialistas. De acordo com o autor (e indo totalmente ao encontro do que se pretendia), o interesse na aplicação da técnica era mais de recolher informação concreta relativamente a uma experiência que os entrevistados tinham como peritos em determinada área, nomeadamente, na definição de projetos para a modernização do sistema judicial português. Assim, o guião da entrevista semiestruturada, ainda que com espaço para que os participantes manifestassem a sua opinião de forma livre, era bastante direcionado ao que se pretendia saber (Anexo 2).

Considerando o papel desempenhado pelos entrevistados nos órgãos de Governo, a marcação da entrevista fez-se sempre precedida da explicação prévia do que eram os objetivos da investigação e, só após essa explicação, era confirmada ou não a sua realização, a data e hora. Em alguns casos, foi, ainda, necessário ter reuniões com os Chefes de Gabinete antes de se poder conversar com o entrevistado.

Inicialmente, pretendia-se incluir nos participantes membros do atual Governo, mas, igualmente, e exatamente com a mesma preponderância, de Governos anteriores. Que tivessem estado, de alguma forma, envolvidos em projetos de modernização do sistema judicial. De anteriores Governos, apenas o Dr. Joaquim da Costa manifestou disponibilidade para responder às questões colocadas. Na tabela seguinte, caracterizam-se os entrevistados desta fase.

Alguns dos participantes, como por exemplo, o Dr. João Farinha, o Dr. Rui Batista e o Dr. José Macieira, foram indicados como contactos relevantes para responder às questões colocadas, tendo em consideração a função que ocupavam e a pertinência do seu contributo para a investigação.

Tabela 2. Definidores de políticas públicas entrevistados

Ator-chave	Período de governação	Papel governativo	Duração
Joaquim da Costa	2011-2015	Secretário de Estado para a Modernização Administrativa	2h27m50s
João Farinha	2020-2022	Assessor do Secretário de Estado da Transição Digital	57m07s
Alexandra Leitão	2019-2022	Ministra da Modernização do Estado e da Administração Pública	Escrita
José Macieira	2015-Atualidade	Assessor da Secretária de Estado da Justiça	1h11m49s
Maria de Fátima Fonseca	2019-2022	Secretária de Estado da Inovação e Modernização Administrativa	55m19s
Rui Batista	Atualidade	Coordenador dos Gabinetes de Coordenação dos Sistemas de Informação e de Acompanhamento de Projetos da Procuradoria-Geral da República	1h14m11s
Anabela Pedroso	2015-2022	Secretária de Estado da Justiça	35m05s
Francisca Van Dunem	2019-2022	Ministra da Justiça	Escrita

A amostra foi, então, constituída por oito entrevistados. As entrevistas foram realizadas entre março e abril de 2021. Um período bastante conturbado, uma vez que Portugal se encontrava em pleno confinamento devido à pandemia COVID-19. Todas as entrevistas foram realizadas a distância, com recurso a meios de videoconferência. Com exceção da Ministra da Modernização do Estado e da Administração Pública, Dr.^a Alexandra Leitão, e da Ministra da Justiça, Dr.^a Francisca Van Dunem, que responderam às questões por escrito.

Todas as entrevistas foram gravadas, após a devida autorização, e transcritas, de modo a facilitar o seu tratamento. Este foi realizado em duas etapas: análise de conteúdo (Bardin, Reto, & Pinheiro, 1977) e com recurso ao *software NVivo* (Bryman, 2012, pp. 591-608). A análise com recurso ao *NVivo* foi, sobretudo relevante por permitir quantificar as categorias e as subcategorias, ou seja, colocar em estatística as categorias mais importantes considerando os discursos dos entrevistados. Para o efeito, após a transcrição das entrevistas e tendo presente as questões de partida e os objetivos da investigação, foram constituídas as categorias e subcategorias que auxiliariam a análise, conforme se apresentam na tabela 3.

Tabela 3. Categorias de análise das entrevistas (NVivo e análise de conteúdo)

Categoria	Subcategoria 1	Subcategoria 2
Europeização	<i>Influência direta</i>	Influência instrumental
		Influência jurídico-legal
		Influência processual
	<i>Influência indireta</i>	Influência instrumental
		Influência jurídico-legal
		Influência processual
	<i>Integração na UE</i>	
Inovação	<i>Atores</i>	
	<i>Instrumentos</i>	
	<i>Modelos hierárquicos</i>	
	<i>Processos</i>	
Modernização	<i>Desafios</i>	
	<i>Interação entre atores</i>	
	<i>Momentos-chave</i>	
	<i>Motivações</i>	
	<i>Procedimentos</i>	Definição de processos
		Organização de serviços
	<i>Processos</i>	Comunicação externa
		Comunicação interna
	<i>Projetos</i>	
	<i>Tecnologias de Informação e Comunicação</i>	Competências infocomunicacionais
Políticas Públicas	<i>Macro</i>	
	<i>Meso</i>	
	<i>Micro</i>	
Sistema Judicial	<i>Magistrados</i>	
	<i>Órgãos de Polícia Criminal</i>	
	<i>Projetos</i>	
	<i>Secretarias Judiciais</i>	
Tradição	<i>Cultura</i>	
	<i>Interação entre atores</i>	
	<i>Procedimentos</i>	
	<i>Processos</i>	

Assim, eram seis as categorias principais, que correspondem aos conceitos centrais da investigação: europeização, inovação, modernização, políticas públicas, sistema judicial e tradição. Em relação à categoria europeização, o que se pretendia era perceber que opinião manifestavam os entrevistados relativamente às influências diretas e indiretas da integração europeia sentidas no seu trabalho e nos projetos desenvolvidos. Sobre a inovação pretendia-se alcançar que atores estavam envolvidos nas dinâmicas de inovação, quais os instrumentos de inovação, se existiam ou não modelos hierárquicos e que processos de inovação eram definidos.

Muito relacionado com a inovação, mas com um cariz mais lato, surge a categoria modernização, subdividida nos desafios à sua ocorrência, que interação entre atores acontece nesta dinâmica de modernização, quais os momentos-chave identificados, as motivações para acontecerem processos de modernização, procedimentos e processos de modernização, os principais projetos que se relacionam com a categoria e o papel das tecnologias de informação e comunicação nesse processo (aliado ao das competências infocomunicacionais).

Foi, ainda, pertinente perceber que relevância era dada pelos entrevistados às políticas públicas como um todo, aquando da ocorrência de processos de modernização. E tal perceção deveria ser adotada a três níveis: macro, meso e micro. Ou seja, compreendendo o sistema judicial

como macropolítica pública, que meso e micropolíticas identificavam os entrevistados. E, ao nível específico do sistema judicial, seria relevante a compreensão relativamente aos processos de modernização envolvendo os magistrados, os órgãos de polícia criminal, as secretarias judiciais e que projetos tiveram mais enfoque nessa macropolítica.

Finalmente, foi relevante dar voz aos entrevistados para perceber que papel teria a tradição nos processos de modernização encetados no sistema judicial português.

Os resultados das entrevistas desta fase podem ser consultados no artigo que se inclui na tese, com o título “*Relevant Stages, Actors, and Instruments in the Portuguese Judicial System Modernization Process*”, mas também nos artigos contidos nos Anexos 5 e 6.

Esta etapa da investigação não decorreu sem algumas dificuldades. Apesar da grande disponibilidade de todos os entrevistados, não foi possível contar com a participação de atores-chave que tivessem feito parte de Governos anteriores. Teria sido bastante interessante perceber a evolução do processo de modernização do sistema judicial ao longo dos anos, que papel teriam as tecnologias de informação e comunicação numa fase mais embrionária da sua implantação em Portugal, por exemplo.

Adicionalmente, conseguir iniciar o agendamento das entrevistas não se fez sem alguns percalços. Com todas as diligências que era necessário tomar relativamente à pandemia COVID-19, as respostas relativas à disponibilidade para entrevista começaram a surgir apenas um mês depois dos primeiros contactos estabelecidos e não sem antes receber algumas respostas negativas.

Embora as tecnologias de comunicação permitam a ocorrência de reuniões a distância e tenham sido uma mais-valia neste período de confinamento, a verdade é que retira grande parte da relação interpessoal que se poderia ter criado se a entrevista tivesse decorrido presencialmente. E, ainda que também se revistam de uma enorme mais-valia as entrevistas realizadas à Dr.^a Alexandra Leitão e à Dr.^a Francisca Van Dunem, o discurso escrito não tem a mesma naturalidade do discurso oral.

Não obstante, estas entrevistas iniciais foram um excelente contributo para a investigação como um todo, como para a fase seguinte, em específico. Em relação a esta, cumpre, inclusive, dizer que, tanto a análise documental, como o primeiro conjunto de entrevistas permitiram perceber que caminho seguir no guião das entrevistas a preparar para os implementadores dos projetos de inovação.

Aliás, foi a partir da análise desta primeira fase de entrevistas que se conseguiram definir as categorias e subcategorias a incluir na segunda fase. Assim, foi pertinente perceber que papel se atribuíam a eles próprios os atores do sistema judicial. Bem como, ainda que ao nível da definição de políticas públicas seja claro que haja uma influência direta da União Europeia, era também relevante perceber se essa influência se faria sentir no terreno. Ou se os atores-chave entrevistados sentiam a modernização mais como algo benéfico ou prejudicial, como um elemento facilitador do seu trabalho ou um entrave à realização do mesmo (tabela 5).

Entrevistas a Atores do Sistema Judicial

A fase seguinte à aplicação de entrevistas a definidores de políticas públicas foi, então, a da aplicação a implementadores, atores posicionados em diversas funções do sistema judicial. Estes dois conjuntos de entrevistas estão intrinsecamente relacionados, ainda que, inicialmente, apenas este grupo de entrevistados estar previsto.

No que diz respeito às entrevistas a que este subcapítulo se dedica, adota-se, mais uma vez, a designação de Flick (2005). Optou-se pela realização de entrevistas semiestruturadas, especificamente, a entrevista centrada no problema (Flick, 2005, pp. 87-89). Esta técnica assenta em três critérios: a orientação do investigador para um problema concreto e relevante; há um cuidado de criar e adaptar os métodos com base no objeto de estudo e a orientação da investigação é feita com base no processo da pesquisa e do conhecimento do objeto de estudo (Flick, 2005, pp. 89).

O guião da entrevista elaborado (Anexo 4) teve como linha orientadora as entrevistas prévias a estas, mas, igualmente, o público-alvo que se pretendia entrevistar. Foram, maioritariamente, colocadas questões relativas aos modos de trabalho dos participantes, terminando com uma última questão relativamente à forma como se poderiam conciliar modernização e tradição e qual seria o modelo ideal para que tal acontecesse.

Foram realizadas oito entrevistas, no período compreendido entre novembro e dezembro de 2021. À exceção de duas das entrevistas, que tiveram lugar por telefone, todas decorreram de modo presencial. A amostra seguiu o padrão de bola de neve, foram contactados indivíduos que trabalhavam no sistema judicial e questionados se conheceriam alguém que estaria disponível para entrevista. No final, o grupo era heterogéneo, sobretudo, em termos de funções ocupadas no sistema judicial, o que deu uma perspetiva também ela heterogénea do seu trabalho, das dificuldades sentidas e dos processos de modernização que acompanhou. A tabela 4 mostra a caracterização dos entrevistados.

Tabela 4. Caracterização dos entrevistados

Função no sistema judicial	Sexo	Anos de trabalho na função	Outras funções ocupadas no sistema judicial	Duração
Oficial de justiça_1	Feminino	5 (desde 2017)	Estagiária do Ministério Público Advogada	1h00m41s
Advogada	Feminino	26 (desde 1996)	Não	27m47s
Oficial de justiça_2	Feminino	5 (desde 2017)	Inspetora do Serviço de Estrangeiros e Fronteiras (SEF)	15m26s
Notária	Feminino	4 (desde 2018)	Não	18m34s
Notário	Masculino	16 (desde 2006)	Advogado	36m29s
Conservadora do Registo Civil	Feminino	19 (desde 2003)	Advogada	12m44s
Inspetor da Polícia Judiciária / Inspetor da Interpol	Masculino	26 / 16 (desde 1996 / 2006)	Não	1h11m28s
Magistrado do Ministério Público	Masculino	36 (desde 1986)	Não	1h01m05s

Mais uma vez, todas as entrevistas foram gravadas, após a devida autorização, e transcritas, de modo a facilitar o seu tratamento, que foi também realizado em duas etapas: análise de conteúdo (Bardin et al., 1977) e com recurso ao *software NVivo* (Bryman, 2012, pp. 591-608). No entanto, a estes entrevistados foi garantido o anonimato e a confidencialidade das respostas, sobretudo devido à posição que ocupavam. Após a transcrição das entrevistas, foram constituídas as categorias e subcategorias pelas quais se pautou a análise, conforme tabela 5. Mais uma vez, o *NVivo* permitiu retirar uma imagem gráfica, estatística das respostas e da relevância de algumas categorias para os entrevistados.

Tabela 5. Categorias de análise das entrevistas (NVivo e análise de conteúdo)

Categoria	Subcategoria
Atores-chave	Avaliação de impacto
	Influência nas reformas
Influência da UE	
Reformas/Mudanças	Momentos-chave
	Benéficas
	Prejudiciais
	Elementos facilitadores
	Entraves
Tecnologias de Informação e Comunicação	Competências infocomunicacionais
Tradição e Modernização	Conciliação
	Tensão
	Modelo ideal

Neste grupo de entrevistas foi pertinente perceber quais os atores-chave que os entrevistados identificavam no processo de modernização do sistema judicial e, na relação com essa categoria, que avaliações de impacto eram realizadas, com que periodicidade e quais as consequências dessa avaliação. E sendo identificados atores-chave, qual a sua influência nas reformas implementadas.

De seguida, foi analisada a relevância e a influência da integração na União Europeia para o desenvolvimento do seu trabalho diário, mas também nas reformas implementadas. E, em relação a estas, que momentos-chave identificavam, se as consideravam benéficas ou prejudiciais, que elementos facilitadores para o desenvolvimento do seu trabalho trouxeram e quais os entraves. Em relação às reformas, ainda, foi relevante perceber o papel das tecnologias de informação e comunicação e das competências infocomunicacionais.

Finalmente, foram colocadas questões que pretendiam compreender qual a perspetiva sobre a forma como conviviam a modernização e a tradição, se mais em tensão ou de forma conciliada. Após o que se questionava sobre um modelo ideal para o sistema judicial, tendo em consideração a sua experiência profissional.

Os resultados das entrevistas e da sua análise podem ser lidos no artigo intitulado “*Challenges posed to the Portuguese judicial system modernization*” (Anexo 5). Mas também nos artigos disponíveis nos Anexos 6 e 7, que aguardam decisão editorial.

A principal dificuldade sentida nesta fase foi, sobretudo, encontrar pessoas disponíveis para participação na investigação. Após a entrevista iniciar, envolviam-se nos tópicos que estavam a ser discutidos e deixavam a conversa fluir, respondendo a tudo e com bastante interesse. No entanto, à partida, não foi fácil encontrar quem aceitasse responder à entrevista.

Tirando esta dificuldade, o facto de esta fase de entrevistas já poder ter decorrido, maioritariamente, de forma presencial foi, sem dúvida, uma mais-valia. Mas houve algumas entrevistas marcadas, que tiveram de ser remarçadas por causa da pandemia COVID-19, o que foi atrasando o plano de trabalhos.

Os resultados desta e das duas fases de recolha de dados anteriormente descritas foram apresentados por artigos científicos, já submetidos a revistas da área das Políticas Públicas. Três dos quais encontra-se, ainda, em fase de avaliação, pelo que apenas podem constar na tese como anexos. Não obstante, no subcapítulo seguinte apresenta-se um resumo dos artigos escritos, com exceção dos que podem ser lidos na íntegra no decorrer da tese.

Resumo de artigos submetidos a revistas científicas

Para além dos quatro artigos que compõem a tese de doutoramento, foram, ainda, escritos mais três, dos quais constam os resultados da investigação desenvolvida, que se encontram a aguardar decisão da avaliação por pares nas revistas onde foram submetidos. Este subcapítulo apresenta um resumo dos artigos que constam dos anexos.

Challenges posed to the Portuguese judicial system modernization²

O artigo faz a análise, com recurso ao *software NVivo* e à técnica de análise de conteúdo, das entrevistas realizadas a atores-chave, colaboradores do sistema judicial português, colocados em diversas funções, num total de oito entrevistas. O que sobressaiu das entrevistas foram os desafios que aqueles atores sentem no que à implementação de processos de modernização diz respeito e, em alguns casos, a forma como tentam ultrapassar esses mesmos desafios.

Os principais desafios apontados foram os seguintes:

- Os constantes programas de reformas e mudanças, que não permitem ao sistema estabilizar;
- As pessoas, seja pela desmotivação, pela idade ou falta de conhecimento, entre outras dimensões;
- A integração na União Europeia e a grande influência que tal teve e tem no funcionamento diário do posto de trabalho;

² Artigo submetido em julho de 2022. Aguarda decisão editorial.

- A avaliação de impacto (ou a falta dela) e as imposições burocráticas para a sua realização;
- A introdução e utilização de Tecnologias de Informação e Comunicação (TIC) e as competências infocomunicacionais necessárias para o seu uso eficiente.

Modernization spheres of the Portuguese judicial system³

Inspirado na teoria de Walzer (1999), que elucida sobre as esferas da Justiça, este artigo propõe as esferas da modernização do sistema judicial português, considerando o resultado obtido pelas entrevistas realizadas aos implementadores dos projetos nesse sistema. As esferas foram cinco:

1. Atores-chave da modernização do Sistema judicial português;
2. A influência da União Europeia;
3. Os momentos-chave do processo de modernização;
4. O impacto do processo de modernização e a sua avaliação;
5. Tecnologias de Informação e Comunicação e competências infocomunicacionais.

The two faces of Janus of the Portuguese Judicial System implementation: tradition and modernization⁴

O último artigo escrito no âmbito da tese de doutoramento assume o mesmo título. O objetivo foi, precisamente, entender de que forma se conciliam a tradição e a modernização no sistema judicial português, que dimensões precisam estar incluídas para que tal aconteça. Através da análise das entrevistas realizadas aos implementadores dos projetos de modernização no sistema judicial, o principal resultado obtido foi a definição do que seria um modelo ideal de conciliação da tradição e da modernização: a especialização na área da advocacia, na magistratura, nas funções dos notários e nos tribunais.

Parte-se de uma caracterização (muitas vezes estatística) do sistema judicial, faz-se uma breve análise ao que têm sido os projetos mais relevantes implementados na justiça e abordam-se os elementos de tensão e conciliação entre tradição e modernização do sistema judicial, tendo como perspetiva a dos colaboradores desse sistema e o que são os pontos críticos para o cidadão.

³ Artigo submetido em outubro de 2022. Aguarda decisão editorial.

⁴ Artigo submetido em julho de 2022. Aguarda decisão editorial.

ARTIGO 1

Melro, A. (2021). Sistema judicial português como política pública. Motivos e fundamentações. *Revista Espaço Público*, n.º 6. Disponível em <https://periodicos.ufpe.br/revistas/politicaspublicas/article/view/246621>.



SISTEMA JUDICIAL PORTUGUÊS COMO POLÍTICA PÚBLICA. MOTIVOS E FUNDAMENTAÇÕES

PORTUGUESE JUDICIAL SYSTEM SEEN AS PUBLIC POLICY. REASONS AND JUSTIFICATION

Ana Melro¹

Resumo As políticas públicas são processos e esquemas complexos de intervenção (macro e/ou micro) na sociedade e, conseqüentemente, na vida do indivíduo (ou num grupo de indivíduos mais reduzido – comunidades). Essa intervenção tem sempre como ponto de partida a resolução de um problema. Essa resolução pode não se vir a verificar ou pode até resultar na criação ou exponenciação de novos ou já existentes problemas. Mas o ponto de partida será sempre a sua solução. Nos moldes da sociedade atual, também ela complexa e com múltiplos atores e agentes de mudança e de intervenção social, política, económica, etc., entende-se que não será apenas o setor público quem concretiza a intervenção referida anteriormente. Muitas vezes, pode não estar sequer envolvido nessa intervenção ou estar em conjunto com os setores privado e social. O artigo entende o sistema judicial como uma política pública, um processo de intervenção na sociedade, com influência direta nesta e na vida de cada um dos indivíduos (encontrando-se eles em contacto direto ou indireto com o sistema judicial), cujo principal foco é a resolução de problemas. Também aqui os problemas são mais complexos, porque não contemplam somente uma vertente social, mas, muitas vezes, também económica, jurídica, que, não raras vezes também, tem como origem um litígio. Esta não pretende ser uma análise simplista do sistema judicial, bem pelo contrário. Compreende-se que é um intrincado conjunto de redes, relações, procedimentos, atores e institutos que, tal como uma roda dentada, todos eles terão de estar alinhados e rodar no sentido certo para que o processo decorra sem sobressaltos e, efetivamente, contribua para a resolução de problemas. O que se pretende é alinhavar as ideias fundacionais que, no entender deste artigo, defendem o sistema judicial como uma política pública macro, baseando-se nos estudos clássicos e atuais do que são políticas públicas e como poderão ser estudadas.

Palavras-chave: sistema judicial português; política pública; análise de políticas públicas

Abstract Public policies are complex intervention processes and schemes (macro and / or micro) in society and, consequently, in the life of individuals (or in a smaller group of individuals: communities). This intervention is always based on the resolution of a problem. This resolution may not be verified or may even result in the creation or exponentiation of new or existing problems. But the starting point will always be its solution. In today's society, which is also complex and with multiple actors and agents of change and social, political, economic intervention, etc., it is understood that it is not only the public sector that carries out the intervention referred to above. Often, it may not even be involved in this intervention or be in conjunction with the private and social sectors. The paper understands the judicial system as a public policy, a process of intervention in society, with direct influence on this and on the life of everyone (being in direct or indirect contact with the judicial system), whose main focus is solving problems. In the judicial system, too, the problems are more complex, because they do not only contemplate social aspects, but often also economic, legal, which, not infrequently, also originates in a dispute. This is not intended to be a simplistic analysis of the judicial system, quite the contrary. It is understood that it is an intricate set of networks, relationships, procedures, actors and institutes that, like a cogwheel, all of them will have to be aligned and rotate in the right direction so that the process runs smoothly and, effectively, contributes to solving problems. What is intended is to baste the foundational ideas that, in the understanding of this article, defend the judicial system as a macro public policy, based on classic and current studies of what public policies are and how they can be studied.

Keywords: Portuguese judicial system; public policy; public policies' analysis.

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Introdução

Afirmar que o sistema judicial é uma política pública tem suscitado várias críticas e dúvidas, questionamentos e afirmações contrárias. O artigo tem como principal contribuição a explanação de um ponto de vista do sistema judicial como política pública, contemplando motivações e fundamentações teóricas para essa consideração. Sendo o ponto de partida para a tese de doutoramento que se pretende desenvolver, é, por isso, um desbloqueador importante para esse trabalho mais aprofundado.

Assim, o artigo defende que o sistema judicial, em todas as vertentes da sua implementação e organização, é uma política pública, tendo, inclusivamente, influência e impacto na vida dos indivíduos e da sociedade como um todo. Esta política pública tem, ainda, como objetivos finais resolver um problema dos cidadãos e fazer funcionar a sociedade. Compreende-se, no entanto, que se trata de uma macro política pública, na medida em que engloba várias micro dimensões e políticas.

Tal como a Educação, a Saúde, o Estado-Providência, a Defesa e as mais diversas áreas que atuação do Estado, defende-se que também a Justiça (não no sentido de implementação de soluções justas, mas sim no de colocar ao alcance dos cidadãos o sistema judicial de resolução de litígios e de oferta de serviços jurídicos) é uma macro política pública. Se a Educação se subdivide depois em micro políticas, como a escolaridade mínima obrigatória, como a colocação à disposição de alunos e docentes de computadores e a tecnologização do ensino, com a instalação de quadros interativos nas escolas, por exemplo; também na Saúde a existência de micro políticas acontece, como a redução das taxas moderadoras, as medidas de redução das listas de espera em determinadas especialidades médicas; e os mesmos exemplos se poderiam dar para todas as outras áreas que atuação do Estado. O mesmo se considera que acontece na Justiça/no sistema judicial.

Não obstante, sabe-se que o sistema judicial pode também ser percecionado como interventor nas políticas públicas em diferentes momentos: a montante, na forma como se efetua o controlo jurisdicional da construção das políticas públicas e a jusante, enquanto instrumento de avaliação da implementação dessas mesmas políticas públicas (França, 2010, p. 85).

Portanto, o que se pretende analisar é a forma como o sistema judicial português está organizado, enquanto política pública, que respostas oferece ao cidadão e que problemas resolve. Consequentemente, será necessário analisar algumas micro políticas públicas implementadas no âmbito desse sistema judicial, como forma de contribuir para a compreensão deste enquanto macro política pública. Pretende responder-se à questão “porque se considera o sistema judicial como uma política pública?”

Compreensão do sistema judicial português

O sistema judicial tem como competência a aplicação do Direito, com todas as suas normas e regras, bem como recorrendo às diferentes fontes admissíveis em Portugal (lei, jurisprudência e doutrina). Pode dizer-se que o sistema judicial, como se conhece hoje (a separação de poderes e a organização funcional), tem as suas raízes no século XVI. Foi, sobretudo, nesta altura que se deu a criação da maior parte dos Tribunais, com a separação, mesmo dentro destes, do tipo de decisões que era necessário fazer na altura. Já neste período, mas mesmo muito antes dele, o objetivo era resolver os problemas que ocorriam entre particulares, sobretudo, nos atos de comércio. Ou seja, foi uma política pública que tinha como objetivo concreto impactar na vida comercial e dos atores envolvidos. A evolução do sistema judicial português culminou, já na década de 30 do século XIX, com a criação do Supremo Tribunal de Justiça².

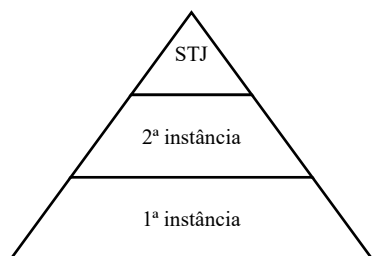
² www.stj.pt, consultado a 20 de março de 2020.

Parte-se, então, da inovação e da tradição, entendidas não como polos, mas como necessariamente aliados num sistema que se entende como conjugando soluções, por um lado, alicerçadas nos séculos de história que não se podem olvidar e, por outro lado, adaptadas e dando resposta às exigências sociais e societais do século XXI.

Um sistema tem como definição mais imediata um “conjunto composto de várias partes”³. É uma definição bastante simplista, que quase nada oferece. Mas o que se pretendeu foi, precisamente, mostrar, desde já, que o sistema judicial aqui em estudo será analisado em todas as suas componentes – humanas, materiais (considerando a organização judicial no seu todo e as suas interligações), funcionais e estruturais. Estas são as partes do conjunto.

Como explica Joaquim Ramos, “a arquitectura do sistema judicial português conta com algumas especificidades que assentam em diferenças de grau e especialização” (Ramos, 2010, p. 2). Assim, a divisão operada sobrepõe-se, de certa maneira, à divisão entre Direito público e Direito privado. Sendo, por isso, a primeira divisão aquela que ocorre entre tribunais judiciais ou comuns e tribunais administrativos.

Os tribunais judiciais assentam na seguinte divisão hierárquica:



Os tribunais de 1.^a instância, dependendo das comarcas, podem ter diferentes competências especializadas: tribunal criminal, de família, comércio, etc.. A tendência, nos últimos anos, tem sido a da especialização da competência dos tribunais. Há também tribunais genéricos, dependendo das comarcas.

Os tribunais de 2.^a instância têm secções distintas, constituídos pelos tribunais da relação (Porto, Coimbra, Lisboa, Évora, Guimarães (desdobramento da relação do Porto)). Pertencendo as Regiões Autónomas à jurisdição de Lisboa.

O Supremo Tribunal de Justiça (STJ) tem também secções distintas de acordo com o âmbito.

Ainda que se caracterizem pela total independência entre as instâncias, existe um laço entre elas de recurso, os tribunais de 2.^a instância são de recurso da 1.^a e o STJ é de recurso da 2.^a. Não obstante, a 2.^a instância pronuncia-se sobre a avaliação e as decisões dos tribunais de 1.^a, sobre os factos e a interpretação do Direito. O STJ só tem competência em matéria de Direito, se a interpretação do Direito sobre os factos foi a correta ou não. No entanto, quando os processos envolvem juízes da 1.^a instância decorrem logo na 2.^a ou no STJ. Quando os processos envolvem pessoas do Governo decorrem no STJ.

Os tribunais administrativos têm uma organização semelhante, mas mais simplificada do ponto de vista das comarcas. Existem também em menor número.



³ <https://dicionario.priberam.org/>, consultado a 20 de março de 2020.

As ações envolvendo membros do Governo entram diretamente para o STA. As decisões dos ST podem ter recurso dentro do próprio tribunal.

Adicionalmente, em Portugal, existem ainda o Tribunal de Contas, o Tribunal Constitucional, os Tribunais Militares (previstos apenas para situação de guerra), os Tribunais Arbitrais e os Julgados de Paz. Como resultado da Concordata de Portugal com a Santa Sé (2004)⁴, são reconhecidos os Tribunais Eclesiásticos.

Numa breve caracterização de cada um deles:

- O Tribunal de Contas fiscaliza os atos que envolvem a utilização de dinheiros públicos por parte de qualquer entidade pública, sendo que algumas entidades da Administração autónoma têm isenção da fiscalização do tribunal.

- O Tribunal Constitucional tem um estatuto próprio e a sua intervenção em qualquer dos quadros dos tribunais judiciais e administrativos ocorre quando é chamado a intervir para avaliar a inconstitucionalidade de uma decisão, vai decidir se uma norma que é relevante para o caso é inconstitucional ou não.

- Os Tribunais Militares são excecionais, em tempo de paz não há tribunais militares, mas nos tribunais judiciais há juízes com formação militar.

- Os Tribunais Arbitrais são mecanismos alternativos de resolução de litígios, compostos por particulares a quem pode ser atribuído pelos litigantes o exercício da faculdade de dirimir conflitos com relevância jurídica.

- Os Julgados de Paz atuam junto das autarquias, estando, por isso, mais próximos das comunidades. O juiz de paz reúne as partes e procura aproximá-las, de modo a que cheguem a uma solução, para que não tenha que haver uma sentença da parte do juiz cível, que só intervém quando já não é possível chegar a acordo.

- Os Tribunais Eclesiásticos não têm grande relevância para o trabalho que aqui se desenvolve, uma vez que julgam processos dentro da Igreja Católica.

Em termos de elementos constituintes do sistema judicial português, ainda se contemplam os Juízes; o Ministério Público; os Advogados; os Solicitadores; Agentes de Execução; e os Oficiais de Justiça.

A organização deste complexo sistema está contida na Lei n.º 62/2013, de 26 de agosto.

Até aqui foram referidas as componentes estruturais, funcionais e humanas. As componentes materiais, como referido, compreendem a organização judicial no seu todo e as suas interligações, que dão lugar a políticas públicas de carácter micro. Algumas dessas medidas são os reajustamentos do mapa judiciário; o programa *Roll Out* Tribunal +, especificamente para a melhoria do atendimento e a otimização do funcionamento das secretarias; o programa Justiça + Próxima; o Registo Criminal *Online*; entre muitas outras que poderão ser consultadas no programa do XXI Governo Constitucional⁵.

Este é, portanto, o sistema judicial português, entendido enquanto política pública. Os motivos para o seu entendimento enquanto tal são o facto de, como referido anteriormente, ser uma macro política, que se divide em várias micro políticas, com intervenientes a vários níveis, muitas vezes, interrelacionados e pela sua inevitável interferência na vida societal e individual. As fundamentações teóricas encontram-se na secção seguinte do artigo.

⁴ http://gddc.ministeriopublico.pt/sites/default/files/documentos/instrumentos/concordata_santa_se.pdf, consultado a 13 de abril de 2020.

⁵ <https://bit.ly/2JZKvdp>, consultado a 13 de abril de 2020.

Definição do sistema judicial como política pública: breve revisão de literatura

O sistema judicial será, então, analisado e perspectivado como política pública, como uma solução holística, com impacto na vida dos indivíduos e na gestão da sociedade. Uma política porque é oferecido enquanto forma de resolução de problemas, num conjunto agregado de soluções, que estão presentes desde o nascimento do indivíduo, contemplam as suas relações sociais ao longo da vida e terminam com a sua morte. Pública porque são soluções unicamente oferecidas pelo Estado (pelo menos as aqui analisadas).

Mas, então, o que se entende por política pública? De acordo com Secchi (2011), a instituição de uma política pública ocorre porque se pretende resolver um problema, contudo, este apenas dá lugar a uma política pública se for relevante em termos de coletivo (número de pessoas que atinge) (Secchi, 2011, p. 2) ou se se tratar de um problema grave.

De acordo com o mesmo autor,

Para um problema ser considerado “público”, este deve ter implicações para uma quantidade ou qualidade notável de pessoas. Em síntese, um problema só se torna público quando os atores políticos intersubjetivamente o consideram problema (situação inadequada) e público (relevante para a coletividade). (Secchi, 2011, pp. 7-8).

Complementando, é política pública porque é decidida e implementada pelas autoridades públicas, pretende alcançar o bem comum e dar resposta às necessidades da sociedade, resultando de uma escolha em termos de o que resolver e quando (sendo as omissões também um reflexo das próprias políticas públicas) (Baptista, Pocinho, & Nechita, 2019, p. 80).

É curioso notar que a análise das políticas públicas tem o seu surgimento nos EUA, no pós-guerra, como objetivo de dar uma resposta científica ao que era a formulação de políticas por parte do Estado para a resolução de problemas (Araújo & Rodrigues, 2017, p. 13). É Harold Lasswell um dos fundadores do campo de estudo, com a sua abordagem sequencial Lasswell (1948 e Torgerson (2007). Curioso porque se estava no período de forte instabilidade, cujo principal objetivo era responder a problemas como forma de garantir a segurança e a estabilidade societais. Curioso porque esses são também os principais objetivos do sistema judicial, garantir que, em situação de conflito, de desigualdade de posições, aquele sistema dá uma resposta que garante que o indivíduo-cidadão sinta que há uma ordem em que pode confiar.

O sistema judicial é, no entanto, política pública e organismo regulador das políticas públicas. Não se segue o caminho do processo legislativo, mas sim o da apreciação, por exemplo, da inconstitucionalidade das normas por parte do Tribunal Constitucional, como se viu anteriormente. Está em causa aqui a apreciação de questões de Direito e não de facto. E isto coloca o sistema judicial num duplo papel, que pode ou não ser conflituante, mas que, certamente, terá que, mais uma vez, ser imparcial e contribuir para a segurança e a estabilidade societais. Como refere Bucci (2013), as políticas públicas terão que se conformar com as regras e os procedimentos jurídicos, tendo como órgãos aplicadores estruturas despersonalizadas (os tribunais, como órgãos de soberania, como caracterizados acima) (Bucci, 2013, p. 26).

Adota-se, portanto, o ponto de vista de Santi Romano (1945) para quem o ordenamento jurídico é um complexo sistema vivo e em constante mutação e adaptação, de organização do Estado. Este sistema garante que as normas são aplicadas, bem como são aplicadas com aquela segurança que se mencionou, mas o sistema não se confunde com as normas, são, de certa forma, interdependentes (Romano, 1945, p. 15). Há, por isso, uma despersonalização do poder (Bucci, 2013, p. 101), com o

fenómeno judicial a acontecer antes mesmo da formulação da norma, quase a dar-lhe sentido de existência, podendo também a norma ser considerada como um dos elementos da política pública, enquanto enquadrada naquelas quatro componentes (material, humana, funcional e estrutural) (Romano, 1945, p. 19).

Embora complexo e intrincado, entende-se que o sistema judicial é política pública e pode ser estudado enquanto tal, uma vez que é a resposta do Estado a um (ou vários) problema social. Uma resposta com vários atores e elementos, como se viu. Além disso, pode compreender-se a sua existência como passando pelas diversas fases das políticas públicas: a definição da agenda (o que é prioritário em termos de alterações à Justiça, por exemplo); a formulação da política (que medidas tomar); a implementação e execução; a avaliação da política Howlett et al. (2013 e Tude et al. (2010). Vai analisar-se, de seguida, a forma como se pretende contribuir para a compreensão de duas dessas fases.

Formulação e execução do sistema judicial português

Esta será uma investigação orientada para o conteúdo (componente material), ou para a análise da política, focada em informar os processos ao nível da formulação e da execução do sistema judicial português, através dos quais se considera que melhores *inputs* irão produzir melhores resultados. Nesta análise de conteúdo irá incluir-se a intervenção das componentes humanas, estruturais e funcionais, uma vez que só assim se considera possível fazer uma análise completa.

Ainda, a análise das fases de formulação e execução parece ser particularmente relevante (mais até do que a definição da agenda ou a avaliação), uma vez que será tida como linha orientadora a modernização do sistema judicial e, concretamente, a forma como essa modernização tem sido enfatizada ao longo dos diversos programas dos Governos Constitucionais ao longo dos últimos 34 anos (1986-2020) e como, em consequência ou não, tem sido implementada. A opção pelo estudo dos últimos 34 anos está relacionada com a possibilidade de estabelecer um estudo comparativo entre Governos de diferentes quadrantes partidários e compreender a lógica de (des)continuidade associada à definição de políticas públicas para o sistema judicial, aliando a isto o facto de grande relevância da integração de Portugal na União Europeia.

No desenvolvimento da tese de Doutoramento será tida como linha de orientação a abordagem dos modelos institucionalista, de processo, racional e incremental. Não se consegue perceber que o sistema judicial, aqui analisado de modo global como já referido, não interligue vários modelos. Assim, em termos de modelo institucionalista, será relevante considerar que, no âmbito do sistema judicial, há uma relação próxima entre a política pública e as instituições governamentais, sendo que estas fazem cumprir, de modo coercivo até, as regras judiciais definidas, atribuindo-lhes legitimidade, universalidade e o modo coercivo de que se falava (Dye, 2009, p. 101).

O modelo de processo tem a sua presença na forma como o sistema judicial segue uma lógica de implementação, com a “identificação de problemas, organização de agenda, formulação, legitimação, implementação e avaliação” (Dye, 2009, p. 104). Um processo com uma dinâmica própria, tendo em conta as especificidades do sistema judicial, as suscetibilidades de quem atinge e os problemas que quer resolver. Mas aqui com particular relevância as etapas de formulação e implementação.

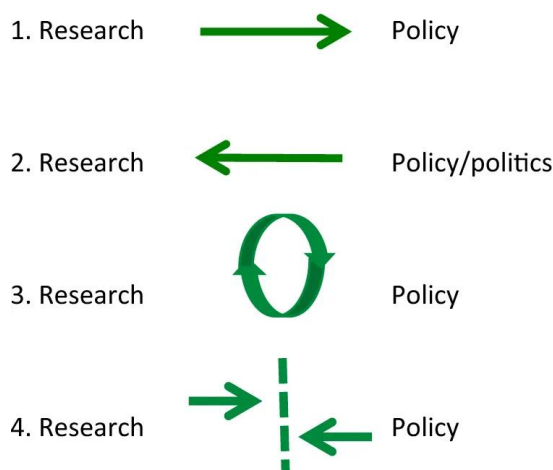
Não obstante as suas características, o sistema judicial enquanto política pública tem presente a eficiência, a eficácia, os ganhos sociais máximos, sendo também estes fatores que se têm em conta na sua modernização. Assim, “os governos devem optar por políticas cujos ganhos sociais superem os custos pelo maior valor e devem evitar políticas cujos custos não sejam excedidos pelos ganhos.” (Dye, 2009, p. 111). Mas nestes cálculos estão também envolvidos “valores sociais, políticos e económicos sacrificados ou alcançados por uma política pública” (Dye, 2009, p. 112).

Finalmente, tem-se presente a relevância para a análise da política pública do sistema judicial o modelo incremental, que “vê a política pública como uma continuação das atividades de governos

anteriores com apenas algumas modificações incrementais.” (Dye, 2009, p. 115). Será pertinente compreender que, na revisão das políticas públicas para os mandatos governamentais, não se operam mudanças disruptivas e que obrigam a reiniciar todo o processo e a repensar todo o modelo do início. Antes se aproveita o que tem sido realizado e se tem configurado como uma boa prática, seja por que motivo for (partidários, económicos, entre outros). Até pela lógica do modelo racional, de evitar ter gastos que se afastem de uma lógica de eficiência (Dye, 2009, p. 115).

Todos estes modelos se compreendem numa lógica de interrelação, porque se considera que todos eles contribuem para a reflexão do sistema judicial que aqui se fará, na sua globalidade, considerando os diferentes atores, os processos e procedimentos e os resultados alcançados. Na visão de Boswell & Smith (2017), enquadra-se a análise que se fará no quarto quadrante definido pelas autoras, ou seja, não haverá uma relação direta entre a investigação e a forma como esta poderá influenciar a política pública e vice versa, mas sim, serão analisados fatores especificamente selecionados para a compreensão aprofundada do sistema judicial, como se pode ver na figura que se segue:

Figura 1. Relações entre a investigação e a política



Fonte: Boswell & Smith, 2017, p. 2

O sistema judicial é, então, entendido como um resultado do processo de governação, sendo este perspectivado na lógica defendida por Gray & Jenkins (1995), da passagem de uma Administração Pública para uma Gestão Pública, em que a excelência, qualidade, flexibilidade, responsividade e missão devem ser as palavras de ordem. Mais ainda quando o que está em análise é uma das políticas públicas mais pesadas e burocráticas.

A formulação de uma política pública tem como objetivo dar resposta a um problema ou necessidades presentes na sociedade (Jones, 1984, p. 7). No caso concreto, serão as necessidades que se sentiram em termos de conciliar as palavras de ordem anteriores (excelência, qualidade, flexibilidade, responsividade e missão) – bem concretizadas e especificadas, obviamente –, com o sistema judicial. Nesta análise da formulação será tida em conta não apenas a solução, mas também o problema que suscitou a solução.

A execução ou implementação da política pública será também analisada. Compreender-se-ão aqui todos os atores e componentes envolvidos nesta fase, inclusivamente, aqueles que poderão não fazer parte de organismos públicos, uma vez que também o sistema judicial português tem assistido à privatização de alguns dos seus serviços (como os Notários, mas também os Advogados, os Solicitadores, profissionais liberais).

Será uma investigação complexa, começando, desde logo, pela forma como é necessário justificar o sistema judicial ou a Justiça como uma política pública. Mas parte-se do pressuposto que o contributo

que se dará às áreas científicas em causa (Políticas Públicas, Ciências Jurídicas) mais do que justificarão a dedicação.

Conclusões – próximos passos

Desde há alguns anos que modernização é a palavra de ordem na definição e implementação de políticas públicas um pouco por todo o Mundo e em vários domínios de atuação (Delahais e Lacouette-Fougère, 2019; Highman, 2019; Kim e Choi, 2019; Koprić, 2019; Pacino, 2019; Rhongo et al., 2019; e Tonelli et al., 2019; Vecchi, 2019). Relativamente ao contexto europeu, essa imposição é ainda mais evidente, com a sua influência a verificar-se, inicialmente, no plano legislativo (diretivas e regulamentos europeus), com repercussões implícitas ao nível da organização dos sistemas educativo, político, económico, judicial, administrativo, entre outros e com a orientação do investimento nessa modernização através do lançamento de programas específicos de financiamento.

Portugal tem acompanhado esta exigência e tendência, com a criação de vários programas e planos estatais; com a adoção dos regulamentos, das diretivas (ambos vinculativos, mas com importação diferenciada), de algumas decisões, recomendações e pareceres; com a mudança operada no sentido de acompanhar os pares europeus e os melhores exemplos.

Tal verifica-se, por exemplo, ao nível ambiental, da gestão de processos da Administração Pública, das políticas educativas, das questões de género, de participação pública, entre muitas outras, entre as quais o sistema judicial, que tem visto a sua organização, estrutura, processos e procedimentos alterarem no sentido de se adaptarem às exigências sociais e societárias, mas, sobretudo, no sentido de promoverem e acompanharem o que são os princípios da gestão das políticas públicas: eficiência, celeridade, proximidade com o cidadão, desmaterialização, transparência, qualidade...

Será objetivo desenvolver uma investigação com foco no sistema judicial português, especificamente na transformação operada nos últimos 34 anos no sentido da sua modernização, considerando a articulação entre processos e modos de fazer tradicionais, típicos de um sistema que tem séculos de história e de intervenção na sociedade, e inovadores, fruto também das mudanças sociais e da evolução societal.

A investigação tem como ponto de partida a questão: como é que a implementação de processos de modernização previstos nos últimos 34 anos, pelos vários Governos Constitucionais, permite conciliar inovação e tradição na política pública inerente ao sistema judicial português? A partir daqui considera-se que será possível analisar as estratégias de reforma definidas e comparar com a sua implementação, nos últimos 34 anos; compreender o papel que cada uma das componentes teve e tem na implementação da modernização do sistema judicial português e verificar a correspondência entre a definição de programas e planos de modernização (inclusive quadros normativos) e os recursos disponíveis para o efeito.

Ponto de partida essencial é a consideração do sistema judicial português enquanto política pública, que permitirá depois conciliar as abordagens adotadas com as etapas que se prevê analisar, contemplando todas as componentes interventoras no processo. Como é fácil perceber, aqui, mais do que conclusões, o que se apresenta são os próximos passos, uma porta entreaberta para a investigação que se segue.

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ARTIGO 2

Melro, A., Teles, F. & Oliveira, L. (2022). Modernization as an enhancer of access to Justice and of proximity between key actors. *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito*, 14(1), 51-70. Disponível em <https://revistas.unisinos.br/index.php/RECHTD/article/view/24423/60749282>.

Modernization as an enhancer of access to Justice and of proximity between key actors*

Modernização como potenciadora do acesso à Justiça e da proximidade entre atores-chave

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Abstract

As claimed by Richard Susskind (2017, 2019), Justice is changing, not only as a necessity, but as consequence of society demands. This paper analyses the way public policies have changed in the last 10 years and how modernization can be perceived both as an enhancer and as a cause of that change, specifically regarding the judicial system. The paper focuses on the interviews conducted with key actors at the level of public policies' definition, which aimed to understand Portuguese Public Administration in general, and the judicial system particularly. The major results of these interviews led to the conclusion that the judicial system is now at the center

* *Acknowledgements:* The Research Project "The Two Faces of Janus in the Public Policies Modernization Process: Innovation and Tradition. The Portuguese Judicial System" is funded by FCT - Foundation for Science and Technology, under the reference 2020.07241.BD.

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of a major development, enabled by the need to adapt to societal transformations and actors' demands. Also, in what Portugal is concerned, because of the European Union (EU) integration and the adaptation to its goals. As claimed by Richard Susskind (2017, 2019), Justice is changing, not only as a necessity, but as consequence of society demands. This paper analyses the way public policies have changed in the last 10 years and how modernization can be perceived both as an enhancer and as a cause of that change, specifically regarding the judicial system. The paper focuses on the interviews conducted with key actors at the level of public policies' definition, which aimed to understand Portuguese Public Administration in general, and the judicial system particularly. The major results of these interviews led to the conclusion that the judicial system is now at the center of a major development, enabled by the need to adapt to societal transformations and actors' demands. Also, in what Portugal is concerned, because of the European Union (EU) integration and the adaptation to its goals.

Keywords: Judicial System; Justice; Modernization; Innovation; European Union integration.

Resumo

Como afirmado por Richard Susskind (2017, 2019), a Justiça está a mudar, não apenas como uma necessidade, mas como uma consequência das exigências da sociedade. O artigo analisa a forma como as políticas públicas mudaram nos últimos 10 anos e como a modernização pode ser entendida tanto como potenciadora e como causa dessa mudança, especificamente no que ao sistema judicial diz respeito. O artigo tem como foco as entrevistas realizadas a atores-chave ao nível da definição das políticas públicas, que tinham como objetivo entender a Administração Pública em geral, e especificamente o sistema judicial. Os resultados das entrevistas levaram a concluir que o sistema judicial está, neste momento, no centro de um grande desenvolvimento, permitido pela necessidade de se adaptar às transformações sociais e às exigências dos atores. Ao mesmo tempo, no que a Portugal diz respeito, considerando a sua integração na União Europeia e adaptação aos seus objetivos.

Palavras-chaves: Sistema Judicial; Justiça; Modernização; Inovação; Integração na União Europeia.

Introduction

In the final minutes of the interview conducted with the Portuguese Justice Secretary of State a request was made: that the scientific research also focus on understanding how the judicial system would manage to adapt and become an effective answer so everyone could access to it. This access should be measured in terms of equity, transparency, and proximity.

The paper emphasizes the changes that are taking place in the judicial system, because of societal transformations, citizens' demands and information, and communication technologies' developments, but also analyses the dimensions Anabela Pedroso mentioned: equity, transparency, and proximity of Justice to citizens. These last variables can be described as Edmund Burke once stated: "A fact occurred that is difficult to talk about and impossible to remain silent" (cit. in Sen, 2012 [2009], p. 37).

All these elements and dimensions are simultaneously cause and consequence of the judicial system modernization and innovation in the past few years.

As a result of the interviews' analysis, one concluded that the judicial system modernization has performed a major role in allowing citizens access to Justice, by understanding its meanders, and moving inside them with less difficulties. But it also contributed for key actors to come closer and start speaking a more similar language.

In Portugal, these developments and changes were enabled by the EU integration (in 1986), even though most interviewees mentioned that the judicial system demand for innovation and modernization is prior to that.

The paper discusses the judicial system as a public policy and how it managed to adapt to all the societal challenges and demands. Exploratory interviews were conducted with current and previous key actors placed in high level positions of public policies' definition.

The paper starts by explaining the methodology implemented in this first stage of the scientific research project. It analyses the interviews considering their relevance for understanding Justice and its modernization. The third part of the paper focuses on key actors and the proximity between them. And, finally, access to Justice is the dimension that, consequently, will bring together all the previously mentioned elements and allows to understand how the judicial system (or Justice) functions as a public policy and how it was forced to innovate.

Methodological procedure

The research project started by conduct exploratory interviews.

First, a characterization of the Constitutional Governments' organization was elaborated. Thus, the ones included in this research were those from 1986 to the current days, that is, since the 10th Constitutional Government. The reason for that was related to a major goal of the project, which was the understanding of the Portuguese judicial system since the EU integration (and its influence on that system).

Considering the adequacy of the actors, the availability of the interviewees, the possibility that they could resort to their memory and provide relevant information to what was intended. Plus, the government areas adjusted to the investigation object, were the variables included in the sample selection. The last four Governments were selected, in a time horizon of the last 10 years.

Table 1. Conducted interviews

Contact/Key informant	Period governing	Government role
Joaquim da Costa	June/2011- October/2015	Secretary of State for Administrative Modernization
João Farinha	Current	Advisor of the Secretary of State for Digital Transition
Alexandra Leitão	Current	Minister of State Modernization and Public Administration
José Macieira	Current	Advisor of the Secretary of State for Justice
Maria de Fátima Fonseca	Current	Secretary of State for Innovation and Administrative Modernization
Rui Batista	Current	Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office
Anabela Pedroso	Current	Secretary of State for Justice
Francisca Van Dunem	Current	Minister of Justice

All the interviews were transcribed and analyzed considering the guidelines of Bardin, Reto, & Pinheiro (1977).

Justice perceived as a Judicial System

Judicial System is the first concept which must be clarified. Its reference is made in a restrict sense, considering the tools, actors, professions/careers, reforms and all the actions available to individuals in their current daily lives. In this specific context, Judicial System will be used in the same sense as Justice, and not considering the ethical or philosophical reflections, except for the last section of the paper.

The reason for that is the system being perceived as a machine, which was the focus of many developments in the past few years, with the attempt of contributing to its modernization and innovation (related to the pressure the European integration brings). Also because Judicial System is perceived as a public policy (Melro, 2021), and it should be analyzed considering the models of the modernization analysis, as an example the Martinellis' proposal (Martinelli, 2005).

Justice is understood as the response to a problem or to a request the citizen has and needs to be solved. The judicial system includes human, material, functional and structural components, being this the multiple careers and professions, the functions everyone occupies,

the resources needed to do so (such as platforms, legislation, rules, and documents) and as well as the structure, meaning the way it is organized.

The paper adopts the definition of system from Backlund (2000), “Simply put, a system has to consist of at least two elements. Since a system is not an aggregate, there must be connections between them. [...] The second condition ensures that there cannot be any independent subgroups.” (Backlund, 2000, p. 448). This definition can be enriched by Sillitto et al. (2017), which claims that a system is “an integrated set of elements, subsystems and assemblies that accomplish a defined objective. These elements include products (hardware, software, firmware), processes, people, information, techniques, facilities, services, and other support elements.” (INCOSE cit in. Sillitto et al., 2017, p. 4).

In conclusion, the Judicial System is a set of combined elements (human (careers) and material resources, functions, and structures), which are interdependent and interconnected. Considering the relevance that the Judicial System operates in several societal areas (economic, entrepreneurship, registration, and citizens identification etc.), its definition is of great importance for the understanding of how the public policies at the definition level are elaborated.

Therefore, the components of the judicial system considered are as follows (with no specific order):

Table 2. Components of the Portuguese judicial system

Careers/Professions	Materials	Functions	Structural
Judiciary Police	Reports	Registration	Police stations
Prosecutor	Informatic platforms	Investigation	Courts
Judge	Statistics	Provide information	Informatic platforms
Lawyers	Processes	Inquiry	Registration offices
Judicial officer	Legislation and Rules	Support the citizen	Citizen stores
Insolvency administrator	Protocols	Access to Justice	Ministry
Implementing Agent			
Notary			
Solicitors			
Associations (Notary, Lawyer, Solicitors...)			
Registrar			
Ombudsperson			
Attorney General			
Minister of Justice			

Secretary of State (and Adjunct) of Justice			
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Considering the careers, it is not easy to define all the professions which contribute or operate in the judicial system midst. Take the example of the Judiciary Police (JP), a specific police force which has a major role in investigating and/or preventing crime, with an indirect connection with the judicial system. However, its relevance makes it important to be included.

All the other professions are intertwined with one another, when a reform or a minor change is conducted in one, another will inevitably feel that change, whether because a new procedure is implemented, or new rules are defined. José Macieira explained this concern:

One of the critical points is that this is a web of huge dependencies. When we deal with the JP, we are dealing with forensic medicine too, we are dealing with the relationship with the Public Prosecutor's Office. When we unfurl the part of the registrations, then the citizens and companies all become worried, because there are a number of things that you can't do, simply buy or sell a house or buy a car, [...] the citizen card, because it is the card that starts the entire process of identifying all the cards that exist in the country [...]. (José Macieira, Advisor of the Secretary of State for Justice, since 2015).

This is how the Justiça + Próxima Plan was born. This plan [...] received contributions from all stakeholders in Justice, from the citizens consulted for this purpose, in addition to incorporating the commitments made in the Government Program, National Reform Plan and Simplex+. (Francisca Van Dunem, Minister of Justice, since 2015).

Material resources give support to the professions, with the definition of functions and the structural elements. It is not an exhaustive list, but all the components are also intertwined, with each one of them having connections with the subcomponents listed.

The previous table and list of components was relevant to contribute for the Judicial system modernization analysis, which occurs in some of the components, but inevitably it has an impact in all of them. And one could also include the existence of another dimensions, which is the institutions and its consequently different levels of acting, for example, the European Court of Human Rights or the International Court of Justice.

Justice is a puzzling system, where all the elements that are included in it influences the others, where functions must be defined to maintain order, and contribute to a sense of security, where citizens know they can find the answer for the problem faced. But also, material resources are an important piece because they define the processes and show the impact. Finally, the structural component includes the places needed to perform all the activities, which have specificities in Justice, and the organization demanded.

Judicial System Modernization

Modernization is a process. It is clear the dynamic characteristic it implies. To what the Judicial System is concerned, in Portugal, it is a process which started more prominently in the last two decades, with the judicial map reorganization (Dias & Gomes, 2018).

There can be several perspectives in analyzing the modernization process: the historical one, when the goal is to understand society cycles; the societal one, modernization processes' perception oriented specific of a certain society or community; and the procedural one, when the focus is the perception of different ways of doing. The adopted perspectives are the societal and the procedural.

According to Martinelli (2005),

By modernization we mean the sum of the processes of large-scale change through which a certain society tends to acquire the economic, political, social and cultural characteristics considered typical of modernity. [...] More generally, it was used as a means of describing and legitimizing new institutions, new legal rules, or new scholarly assumptions (Martinelli, 2005, p. 5).

The modernization happens in a bi-directional way, it enables the judicial system reforms, but it is also a cause of that change. Being by processes, new legislation, new buildings, contract of new collaborators, extinction of workstations, creation of new ones, among many other changes and reforms. All of those enabled by the modernization process. However, when those happen, many other occur consequently.

Since 1976, if official governmental documents are scrutinized (or even in a period before that (Corte-Real, 2018)) it is already possible to find the need to modernize Portuguese public administration. One cannot claim that the Portuguese judicial system modernization process only started in the decades above mentioned (since 1986).

First, the legal reform is mentioned, with the reference to Civil Code or Penal Code. Secondly, the judiciary reform was a concern, with the courts, the Republic Prosecutor General and the Judiciary Superior Council reforms being mentioned. But also reforms in the Judiciary Police, in the Registration and Notary services and in prison services. Including informatic services and platforms⁴.

As Maria de Fátima Fonseca states,

[...] talking about modernization and innovation is something that is not exclusive to the post-25 of April [the date that marks the beginning of the democratic regime, in Portugal] [...]. In fact, in several diplomas, there were already several indications that the Public Administration should always modernize." Maria de Fátima Fonseca, Secretary of State for Innovation and Administrative Modernization (since 2019).

⁴ I.st Constitutional Government Program, available at <https://www.historico.portugal.gov.pt/pt/o-governo/arquivo-historico/governos-constitucionais/gc01/programa-do-governo/programa-do-i-governo-constitucional.aspx>

If modernization and innovation processes can be perceived as existent from many years till now, this was not an easy path. Filipe Teles (2020) already showed the slowness of new practices in the public sector. Considering that the last 45 years of democracy (after 41 years of dictatorship) were, gradually, seeing processes of simplification, modernization, proximity to the citizen, efficiency, and transparency (Teles, 2020, pp. 446-447). However, as Ongaro had already mentioned, these processes are being introduced more at the micro level of public management, which does not fail to have an impact at the macro level (Teles, 2020, pp. 448-449).

All these factors and dimensions lead to innovation, which is one of the dimensions of modernization. Innovation or innovative processes implemented in the organization of any system, method, or procedure, whether at the level of any sector (public, private, social, academic) or production area (industry, services...) always implying an adaptation. This adaptation can be constant and frequent, just like Dan Andrei (2019, p. 386) points out, "The innovation has a character of permanent change, which aims to adapt variables, determinants in order to achieve the success of competitive strategies."

Therefore, innovation is the process through which new elements are integrated along the decision and implementation chain of the judicial system, this perceived as a public policy. And it is a process, because it is considered that it is not something to be carried out only at the beginning of its implementation, but rather it will be possible to integrate according to the needs in terms of demands' change and adaptation.

Innovation is often applied as being the opposite of tradition. Traditional ways of doing things, linked to history, uses and customs. The option is to keep the judicial system connected to what has been its founding characteristics, almost from a conservative perspective of judicial solutions' implementation. However, Tradition and Innovation are two faces of a unique coin, hardly distinguishable in judicial system.

Tradition and innovation are not contradictory terms. [...] we are inevitably doomed to innovate, and this must be part of our tradition. Because if we don't focus so much on tools, but instead focus on the purpose of things, on value, if the constitutive value of public administration is to provide public service, reassuring responses in the form of public policies as well. If that, is our purpose and if that is our core value, we are doomed to innovate and therefore we can maintain organizational traditions, we can even maintain traditional political philosophies, but always reconciled with a perspective of innovation in the answers given. (Maria de Fátima Fonseca)

The development of technology and digitization is a challenge for many traditional sectors, such as the case of Justice. Ensuring the use of direct channels and the use of technologies means saving precious time in the response of the justice institutions. But the use of technology (with the corresponding change in processes and procedures) cannot (and should not) make the judicial system "robotic". It is necessary to promote the humanization of the system and it is in the contact between these two vertices that the reconciliation of tradition and modernity must be found. (Francisca Van Dunem)

(a) Information and Communication Technologies and infocommunicational competences

During the interviews, Information and Communication Technologies (ICT) were tools immediately associated to the modernization processes in Portuguese Public Administration and in the judicial system. First, to modernize implies to digitalize, to computerize, to dematerialize. Consequently, when asked about the characteristics of Public Administration and the judicial system modernization, the interviewees immediately associated it to the use of ICT:

The information and communication systems allowed us a more holistic view of public services and allowed us more collaborative work contexts, adjusted to the needs of citizens and companies, also ensuring greater “physical” proximity to the Public Administration. (Alexandra Leitão, Minister of State Modernization and Public Administration, since 2019)

Over the past two decades, several reforms have sought to make the judiciary more transparent, accessible, and effective. With its most recent reforms, “Justiça + Proxima” and “Simplex +”, Portugal has adopted an integrated approach of administrative simplification, service improvement and digital strategies. (Francisca Van Dunem)

[...] artificial intelligence or sensors, in fact, there are a set of investments that are planned now for the next year to take advantage of this. For example, we can use artificial intelligence in communication channels with the citizen, the so-called chat bots, so that we assure a greater capacity to respond to people’s doubts, information needs at any time. (João Farinha, Advisor of the Secretary of State for Digital Transition, since 2019)

Application of ICT to the ways of doing things and to processes is not the only form of modernization and innovation. And this is how things have changed over the past years:

But I would say that [...] we also know that modernizing is not about injecting technology into organizations and therefore we do not transform anything by just acquiring platforms and linking platform authorization services. We know that electronic bureaucracy is much more dangerous than paper bureaucracy. And, if we don’t keep up with the introduction of new technologies and, nowadays, we always talk about digital, [...] and tools with changes in people’s attitudes, in knowledge, but, above all, in the attitudes and management capacity of organizations, regardless of structural issues, in my point of view, they end up being just an externality. In fact, we are not able to make changes that are sustainable. (Maria de Fátima Fonseca.)

And this is a reflection that is present in the development of major changes, being them the introduction of new ways of doing, new processes, new organization models and maps or the development of informatic applications or platforms:

As a moment prior to this entire process [the modernization process of the last five years], I would like to highlight the introduction of experimentation and systemic

thinking methodologies - service design and system thinking - in a concept of agile project development - agile projects - which helped to shape a new work paradigm: collaborative, simple, focused on results and measurable. (Francisca Van Dunem)

The Magistrado [a platform that is being developed to incorporate tasks and access to judicial processes] was already developed in a completely different way. The issue of User Experience, think-by-design. When we are thinking about modulating all applications, we already did it by designing interfaces that are more intuitive and more natural in the relationship with our users. Then we won the first part of the battle which is "I'm not afraid of technology, and I adapt to it quite quickly." (Anabela Pedroso, Secretary of State for Justice, since 2019)

But ICT are merely tools if not accompanied by competencies to use them (which is exactly what Anabela Pedroso draw attention for). As Marques (2009) claimed, "it is necessary a change of attitude, culture and organization" (Marques, 2009, p. 15) if the will is to really apply and use the potentialities ICT provide. This is something the interviewees also mentioned with quite relevance:

[...] having infocommunication skills is increasingly relevant for the adoption of modernization practices and measures. These are fundamentally centered on innovation in welcoming and attending policies for citizens and companies, administrative communication, procedures' simplification, involvement of interested parties and the production and processing of information for management. These diverse components contribute to the continuous management improvement process, which must be responsive to contemporary needs and trends, while being able to anticipate and subsequently plan responses to future challenges. (Alexandra Leitão)

When using technology, we must ensure that the basics are understood, that we are not just digitizing physical processes. A real understanding of the digital and its potential will effectively allow for correcting what is not working in the system and will allow us to advance with innovations that can increase understanding, efficiency, usability, and convenience in the use of Justice services. Without any doubt infocommunication skills help to understand the true reach of the digital and to establish better policies. (Francisca Van Dunem)

[...] the experience of knowing what technology architectures are and how technology architectures are implemented is the added value I can have. There is no transformation today if the protagonists do not have the slightest knowledge of what this means. [...] How am I going to transform systems as complex as CITIUS or SITAF [informatic platforms which allow interested parties to access their judicial processes] without understanding that there is architecture by objects or whatsoever. (Anabela Pedroso)

Not only were the infocommunicational competencies – meaning the capacity/ability to search and gather information and/or establish social relationships in digital media (Borges & Oliveira, 2011) – mentioned as relevant, but also the ability to communicate with other disciplines in such a way that leverages individual knowledge, but also transparency, efficiency and the possibility to transform the judicial system in order to make it more accessible.

In the words of Rui Batista:

On the part of magistrates, the positions of head of the magistracy are held by magistrates, jurists. And, therefore, digitization was not part of our personal training and, perhaps, the people who are in charge are from generations that have been digitized, they were not already born with this digitization. But what I have noticed in contact with various entities is an awareness that it is absolutely strategic and crucial. What I admit is that we will clearly have to open our eyes and have an idea, not only of humility, but of interdisciplinarity, with technical elements, largely outside justice, that allow us to realize the potential that, at this moment, digital solutions can bring to our business.” Rui Batista, Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office (since 2019).

In conclusion, one can state that ICT are cause and consequence of modernization processes, they can facilitate those processes (with all the necessary cautions) and can make them faster. But none of it is relevant for the judicial system matter if not associated with a culture and an awareness of the potentialities ICT bring. And that is what Giddens discuss:

In all cultures, social practices are routinely altered considering the progressive discoveries that feed them, but only in the era of modernity is the revision of conventions radicalized to apply (in principle) to all aspects of human life, including the technological intervention in the material world. It is often said that modernity is marked by an appetite for the new, but this is perhaps not entirely accurate. What is characteristic of modernity is not an adoption of the new, just because it is new, but the presumption of generalized reflexivity – which evidently includes reflection on the nature of reflection itself.⁵ (Giddens, 1998, p. 27).

That reflection is often made when it comes to define new processes and procedures.

(b) Processes' and procedures' definition

Change does not come easily when a procedure is performed in a certain way for years. In fact, that was one of the challenges mentioned by the interviewees, when asked about the barriers to modernization:

There are two things [challenges], first, people's demotivation. Public servants, in general, have been sacrificed for decades and, I think, that makes people very defensive to any change. They think, “There we go again, a few more people who think they are the greatest to change all this”. This resistance also has to do with [...] age. This is a problem, it's the biggest problem that the Public Administration has, it's not just in Justice, it's general. (João Farinha)

The first major challenge was linked to Justice organizational culture. We encountered challenges and situations that needed to be resolved pragmatically. It was necessary to

⁵ Translation provided by the authors.

do something different, which would allow to create results more quickly, and which would instigate people to step out of their comfort zone. At the same time, [...] it was necessary to create a sense of belonging on the part of justice officials that would allow for a renewal of the “culture of service” and restore the trust of operators and citizens in Justice.

From an operational point of view, financing, and the state of the legacy of justice regarding information systems were other challenges (and that still have to be overcome). (Francisca Van Dunem)

This clearer when it comes to integrating technologies in judicial system. Susskind (2017), in his study regarding the future of lawyers’ profession, already mentioned the challenges actors from the judicial system would have to face if the goal is to modernize (even though the paper does not consider that modernization only has to do with technology integration):

[...] when thinking about technology and the internet, the challenge is not just to automate current working practices that are not efficient. The challenge is to innovate, to practice law in ways that we could not have done in the past.

At the same time, though, many of these innovative technologies are disruptive. This means they do not support and sit happily alongside traditional ways of working. Instead they fundamentally challenge and change conventional habits. And so it will be in law. These pervasive, exponentially growing, innovative technologies will come to disrupt and radically transform the way lawyers and courts operate. (Susskind, 2017, pp. 14-15)

As for the Portuguese judicial system, modernization and innovation were words that were present for quite some time in strategic plans. And that has inevitable consequences in the way things are thought and executed, whether in a definition level, or in an implementation one. But was there a strategic plan or were changes operated by feel? This question was asked to the interviewees, so that it was possible to understand how changes were introduced.

Anabela Pedroso gives a glimpse of some “recent” chronological milestones:

[...] in 2003 we had, in fact, a moment when we started talking about technology strategically identified with the plan. At the time, with the action plan for e-government, which had a very strong component for the judicial area. And then we returned to have what is still within your question, as the need occurred, we would give some answers. In 2006, Simplex was deployed, despite being a different strategy, because it was a bottom-up strategy. It was more the notion of serving the citizen, from the outside to the inside, starting from the need, find the answer inside. (Anabela Pedroso)

And José Macieira explains how the strategies for judicial system modernization have been implemented in the last legislature time frame (last four years, which started in 2019): “[...] a plan was elaborated, which lasted these four years. This plan was thought of in three months, and we thought based on all the reports that we had from all the organizations, which they do every year, reading, seeing, arguing, because three months is not much time.”

In other words, a three-month plan to modernize the judicial system was elaborated, which resulted in the project *Justiça + Próxima*⁶ (Closer Justice). The goal was to transform the judicial system in such a way that would make it closer to the citizens, more transparent, more efficient, and more human. But this implies internal and external changes, the involvement of all key actors and the availability of all the resources. As explained by Anabela Pedroso: “[...] the most important part we have to do when talking about judicial system modernization, first understand what the situation is, what the problems are and, above all, try to find quick solutions, but always with the involvement of the protagonists, because otherwise the relationship of trust will get lost.”

In the level of public policies’ definition, according to the interviews’ analysis, processes’ and procedures’ definition does not come without some barriers: (1) the advanced age of some players in the judicial system (judges, lawyers, notaries, services directors, etc.) which may hamper the modernization; (2) the costumes and frequent uses that some processes have implicit (traditions); (3) the lack of knowledge regarding the use of technology and even the skepticism concerning its potentialities; (4) the difficulty to gather multi and interdisciplinary teams; (5) the inexistence of a specific department of informatics and computer science in Public Administration and, finally, (6) the lack of financial resources. And this is just to sum up the challenges when it comes to (re)define processes in the Portuguese judicial system, mentioned by the interviewees.

Changes have been made, and projects as *Simplex*, *Simplex+*, *Justiça + Próxima*, Citizen Card, Citizen Stores, *CITIUS*, *SITAF*, *Magistrado* are being developed and deployed, and many of them are being thought to bring Justice closer to the citizens and to make it truly accessible.

Key actors

One of the most important variables when comes to evaluate the Public Policies’ modernization is the involvement of key actors. And the explanation of who those key actors are. This gains a special significance when the reference is made to the judicial system, considering the vulnerable area it is (by definition, the judicial system is an area that people seek to solve personal problems and conflicts (Susskind, 2019, pp. 23-24)), but also because it involves several actors, with several interests (some of them in conflict) and in different stages of the system.

When asked about key actors involved in the judicial system modernization process, the interviewees gave different answers in reference to what department/Ministry they were integrated. But all the interviewees agreed in one common answer: the citizens must be included in the process. And in some projects, from the beginning.

The key actors are, immediately, those to whom the Administration addresses its answers, to listen to citizens and companies. (Joaquim Costa, Secretary of State for Administrative Modernization, from June/2011 to October/2015).

⁶ More information at <https://justicamaisproxima.justica.gov.pt/>.

And [Justice] closer to the Citizen, by placing the relationship with the Citizen at the center of its activity, simplifying and clarifying the language and information provided. Providing new and varied services and guaranteeing a multichannel. (Francisca Ven Dunem)

This is one of the highlighted dimensions by Fonseca and Carapeto (2009). The authors state that, “Public administration modernization of the present days, more than dependent on modernization strategic and broad plans, it depends on the creation of human networks that develop a collaborative culture and concrete project-oriented which satisfy the citizens’ real needs.” (Fonseca & Carapeto, 2009, p. 266. Translation provided by the authors).

In fact, citizens are frequently mentioned by the interviewees, as being in the center of all the modernization process. In some cases, this process is not only made for them, but it starts with them, “The bet on digital as mediator, through the opening of several Citizen Spaces – managed by local authorities with the support of AMA [Agency for Administrative Modernization] – is one of the ways found to provide close responses to populations, for example, in accessing digital public services.” (Alexandra Leitão)

Actors and their importance in the modernization process, specifically of the judicial system, is also frequently mentioned by Dias and Gomes (2018). The authors explain the role of different actors in the judicial system reorganization, even considering the different stages where they are involved, depending as well on which actors the reference is made to. One of the examples the authors give is the creation of CITIUS, a technological platform where different interest parties access to their judicial process, being possible to begin a process and digitally submit various documents along the way. The parties can be judges, public prosecutors, court clerks, lawyers, and solicitors⁷.

However, at the public policies’ definition level, this interconnection, articulation, cooperation, and communication of different actors is perceived as one of the most relevant dimensions:

[...] we also have pressure, for example, from business confederations [when they alert us] “pay attention to licensing, to companies’ relationship, for example, at the level of reporting obligations to the tax authority, social security or SNI [Statistical National Institute]” and, therefore, we have many key actors, in the end, signaling to us what the Government’s priorities are or should be. (João Farinha)

[...]and we are in gradual articulation, and this is the strategic, to create interconnection structures, and that is why interconnection is also fundamental, with the digital systems of our main partners, the criminal police bodies, judicial police, PSP [Public Security Police], GNR [Republican National Guard]. [...] we now have another project, the AMA, [...] which is a way of guaranteeing that our computer system is coherent with other digital systems. There are many public services that are behind, but they are all investing in digitization right now. That way they can connect with us. [...] another virtue was to articulate the Supreme Judicial Council, the Public Prosecution, and the Ministry of Justice. Because in the justice system management,

⁷ (<https://www.citius.mj.pt/portal/article.aspx?ArticleId=0>)

there is no single responsible hierarchical entity, the Ministry of Justice respects the independence of the Supreme Judicial Council and the autonomy of the Attorney General's Office. Therefore, the Ministry of Justice cannot impose goals, it can only articulate goals. But internally, establishing goals to magistrates, namely quantitative ones, was a shock and was and still is a challenge." (Rui Batista)

So, if, on one hand, all different key actors individually play an important role in the definition of public policies, namely, in the judicial system. The system and its modernization processes are thought to facilitate peoples' lives, being the lives of the ones that are in the decisions' side, being the lives of the ones who must accept and obey them.

On the other hand, the coordination and articulation of different actors is one of the most challenging tasks. But, at the same time, it is the only way modernization process can be accomplished.

Maria de Fátima Fonseca explains this idea:

"Therefore, in recent years, this continuous path of orientation towards transformation, simplification, digital introduction, has been increasingly associated with the emphasis on *collaboration*, on *innovation* and on *participation*, of the *involvement of actors*. Therefore, in a logic of public policies, not as something autocratically decreed by the State, but as a process of involvement. In fact, *multipolar*, of various authors, with different rationales and, obviously, with different roles in this multi negotiation, which is made with the focus on the purpose of achieving a result, whether in terms of the renewal of the public services offer, or in terms of generating new responses for society, for the economy, for people in general. Without this combination, I would say that we would not truly be able to understand the latitude of the transformations we call modernization. (Maria de Fátima Fonseca)

But how does the integration of ICT, and the correspondent infocommunicational competences, the definition of new processes and procedures and, finally, the intervention of key actors, result in an effective access to Justice?

Access to Justice

Daniel Bonilla Maldonado (2020) suggests three approaches to the concept of "access to Justice": *constitutional*, which tries to understand how Constitutions include the access to Justice, and explains how the limitations in that access also occurs; *sociological*, which is divided into different dimensions. The one that is relevant for the scope of the paper is the understanding of "how institutional designs facilitate or impede access to justice (...) This approach to the right to access to justice also examines the reasons for the distance that exists—to varying degrees in all liberal democracies—between written rules, which give the right a universal character, and the rules in action" (Maldonado, 2020, p. 17). The third approach is the *normative* one, which considers aspects of the law, its application and interpretation, as well as the costs to access to justice.

In the words of the interviewee Anabela Pedroso, it is relevant to understand the following:

How the justice system manages to adapt in a way that it can effectively be a response to access to justice?! It is not access to law, access to law is more linked to the normative component, legal aid. I am talking about access to justice as the ability that, anyone with a need, without understanding anything about justice, or its jargon, its language, can know for sure that he/she will be treated fairly, with transparency and with proximity. And I think that these are perhaps the fundamental aspects. (Anabela Pedroso)

That is one of the reasons why the paper proposal contains inside of the judicial system the justice concept itself and, inevitably, ethical, and political variables, as well as the need to explore the injustice concept. Therefore, the concerns shared by Amartya Sen (2012 [2009]) are followed, namely when the author questions: "What role will have rationality and reasonableness in the process that leads us to understand the demands of justice?" ([2009] 2012, p. 11. Translation provided by the authors). But in a sense that institutions that are transformed must consider the needs of present and future times and citizens, how to actually include them in the transformation process and the dimensions that must be taken into account. And that is: language, platforms, ease of access and usage (of those platforms), ease of access to a response, effective response to the conflict, transparent responses etc.

It is not possible to ignore the other elements included in the access to Justice definition (whether the constitutional ones, or normative ones), and, in that sense, we follow the idea of Dias and Gomes (2018):

Access to the courts is currently constrained by many factors such as legal costs, restrictions on legal aid, and access to other legal services, in particular the Public Prosecution Service. However, physical distance is also an important aspect of access, and reforms of the judicial map should not compound geographical abandonment. It is necessary to take into account the impoverishment of populations, geographical asymmetries and the travel difficulties and costs for parties and witnesses during the entire proceedings. It is possible to create a balance between rationalisation, access and citizenship without using methods that are too punitive for communities in the interior of the country. The present reform has made justice, in general, more distant. (Dias & Gomes, 2018, p. 186)

Practical aspects of access to Justice, the things that are often forgotten or taken for granted, but are what, most of the times, contribute to delay Justice, inefficient systems, inability for citizens to clearly understand what happens in a process (or how to begin a process) they are involved in, are the dimensions included. This practical and managerial perspective is situated upstream from the philosophical and downstream from the normative.

In that sense, Lucy (2020) states,

The current relatively easy availability of cases and statutes in electronic form means that, once citizens are made aware of these sources, they can acquaint themselves with the law. And that is exactly as things should be, if law is indeed a means of subjecting human conduct to the governance of rules. [...].

The relative ease with which much legal knowledge can be accessed may lead one to wonder why the second component of AtoJ [Access to Justice] is necessary. This is the

legal expertise component, and it insists that guidance be available about what the law requires. [...] Legal knowledge is complex. [...] Some complexity arises because current legal knowledge draws upon a long tradition and rich vocabulary of legal concepts that do not always overlap with ordinary common-sense concepts. Furthermore, even when legal concepts have obvious equivalents in ordinary language (think, for instance, of causation or intention), the apparent correspondence is often inexact. [...] Complexity marks legal knowledge for another reason. It arises from the process of integrating current legal developments into the narrative of existing and past law. [...] The third component of AtoJ is the legal fora component. It concerns access to those bodies, such as courts and related institutions, which constitute the primary dispute resolution fora of most legal systems. (Lucy, 2020, pp. 39-40).

An attempt of answering the question: Is Access to Justice effectively happening, in the Portuguese judicial system? is provided by the OCDE recommendations:

- a) Develop a longer-term inclusive and comprehensive justice strategy, which brings together different branches of power and goes beyond the electoral cycle to respond to the legal needs of people, businesses and other users across the country, including vulnerable groups.
- b) Strengthen a user-centred and integrated approach to the provision of legal assistance, legal aid, and dispute resolution services, including legal assistance, lawyers, referrals, ADR [alternative dispute resolution] and online dispute resolution (ODR) as part of a continuum of dispute resolution services.
- c) Continue improving design and functioning of justice information systems.
- d) Consider establishing inter-institutional working groups to review existing procedural laws, to ensure their full alignment, including with the growing importance of ADR mechanisms and people centric approaches. They could, in addition, evaluate non-legislative measures, such as resource allocation and technological improvements.
- e) Strengthen the involvement of court users in the design and assessment of the ongoing rollout of the Tribunal + project. These efforts should be accompanied by greater communication of reforms to enhance understanding and familiarity of the introduced changes. (OCDE, 2020, pp. 12-20).

This means that, a lot of work has already been made, the efforts to provide Justice to everyone are working, and most of the times, the desired ones. But, as already stated, Justice is a complex system, with multiple actors, different dependencies between them and it includes several tools. So, a lot of work needs to be done, but in a way that, as claimed by Arete (2021), access to Justice is a top priority (Arete, 2021).

Conclusions

Portuguese Judicial system is, to some extent, under an ongoing reform. This is underlined by most interviewees and by the literature on the topic (Pedroso, Trincão, & Dias, 2003). That reform, mostly in the past few years, implicitly include processes' and procedures' modernization, with innovative approaches to old problems (whether incremental or disruptive ones).

One of our main conclusions is the pervasive and ubiquitous characteristics technologies have in this Portuguese judicial system modernization process. This may seem a basic statement, but not if one considers the implicit tradition there is in a system that has hundreds of years of existence, and hundreds of habits and uses of a certain way of doing things, with a very rigid normative framework.

To contradict that fact (but without losing the imperious juridical certainty and security), new concepts and work experiences are important to be included, which are: collaboration, interoperability, communication, connection, cooperation, and many words that allow the key actors to feel involved in that change, in order to positively contribute to it.

That said, the second conclusion is that it is not possible to operate the judicial system modernization if key actors are not included, if that modernization (or reform, or innovation) is imposed only from a top-down approach. This is not only because of what imposed measures create on actors (for example, resistance), but, and most important, because a judicial system implies actors in all the stages of its existence, it has no relevance whatsoever if it is not thought for those actors, and with those actors. They are the ones who will use it and make it work.

Therefore, modernization bottom-up strategies must include all the networks judicial system has, and the tools needed to apply those strategies. One of the most important at the time is to provide actors with relevant competencies not only for the changes that are occurring in the judicial system, but also for the XXI century, and for the higher and higher adaptation of processes to the technological revolution, that are infocommunicational competencies.

The last conclusion is related to the EU role in the modernization processes happening in Portuguese judicial system. Portugal is part of the EU since 1986. This means that there is a supranational entity ruling and evaluating national decisions and activities. Paradigmatic examples of this are the *2019-2023 Action Plan European e-Justice*⁸, *Shaping Europe's Digital Future*⁹, *2021 EU Justice Scoreboard*¹⁰ and, one of the most recent and relevant, the *Recovery and Resilience Plan*¹¹, which includes a huge amount of money and several measures for judicial system modernization.

None of what has been said and none of the modernization measures would be useful if they don't allow effective access to Justice and the proximity between key actors, but also proximity between the system and citizens. Those goals seem to be well understood by policy actors when they clearly identify which barriers they face, solutions to overcome them and a specific time horizon to do it.

⁸ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0313\(02\)&rid=6](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0313(02)&rid=6)

⁹ <https://ec.europa.eu/digital-single-market/en>

¹⁰ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3523

¹¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2985

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Melro, Teles, Oliveira I Modernization as an enhancer of access to Justice and of proximity between key actors

TELES, F. 2020. Public Administration in Portugal. In: G. Bouckaert & W. Jann (Eds.), *European Perspectives for Public Administration: the Way Forward*. Leuven, Leuven University Press, pp. 439-454.

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Submetido: 13/12/2021

Aceito: 19/10/2022

ARTIGO 3

Melro, A., Teles, F. & Oliveira, L. (2022). The path to public policies' reform definition. The case of the Portuguese judicial system¹. *Revista ACERTTE*, 2(10). Disponível em <https://acertte.org/index.php/acertte/article/view/101/82>.

¹ Ver Anexo 8, onde se incluem as tabelas complementares ao artigo.



REVISTA CIENTÍFICA ACERTTE ISSN 2763-8928

THE PATH TO PUBLIC POLICIES' REFORM DEFINITION. THE CASE OF THE PORTUGUESE JUDICIAL SYSTEM

O CAMINHO PARA A DEFINIÇÃO DA REFORMA DE POLÍTICAS PÚBLICAS. O CASO DO SISTEMA JUDICIAL PORTUGUÊS

EL CAMINO HACIA LA DEFINICIÓN DE LA REFORMA DE LAS POLÍTICAS PÚBLICAS. EL CASO DEL SISTEMA JUDICIAL PORTUGUÊS

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e210101

<https://doi.org/10.47820/acertte.v2i10.101>

PUBLISHED: 10/2022

ABSTRACT

Reforms imply changes, introduce new ways of planning, execution, and evaluation. It may also entail modernization and the introduction of innovative processes, which can be disruptive, and incremental, but always considering the challenge that rises in the beginning: governance ability. Therefore, the variables such as maintaining or increasing (ideally) efficiency, considering democracy, stability, the scope and nature of institutional structures most always be in the process. The paper analyses the definition of public policies reform, being the Portuguese judicial system the case study. Having that in mind, in its sections, the paper considers different dimensions of the modernization and reform process, namely, the drivers that motivate reforms, the path followed, the key moments and the key actors of the reforms, and, finally, the impacts of the reforms.

KEYWORDS: Public policies. Reform. Modernization. Governance. Portuguese Judicial System.

RESUMO

As reformas implicam mudanças, introduzem novas formas de planeamento, execução e avaliação. Podem também implicar modernização e introdução de processos inovadores, que podem ser mais ou menos disruptivos e incrementais, mas sempre considerando o desafio que surge no início: a capacidade de governança. Portanto, variáveis como manter ou aumentar (idealmente) a eficiência, considerando a democracia, a estabilidade, o alcance e a natureza das estruturas institucionais, quase sempre estão no processo. O artigo analisa a definição de reforma das políticas públicas, sendo o sistema judicial português o caso de estudo. Tendo isso presente, nas suas seções, o artigo considera diferentes dimensões do processo de modernização e reforma, tais como, os motores que motivam as reformas, o caminho percorrido, os momentos-chave e os atores-chave das reformas e, finalmente, os impactos das reformas.

PALAVRAS-CHAVE: Políticas públicas. Reforma. Modernização. Governança. Sistema Judicial Português.

RESUMEN

Las reformas implican cambios, introducen nuevas formas de planificación, ejecución y evaluación. También pueden implicar la modernización y la introducción de procesos innovadores, que pueden ser más o menos disruptivos e incrementales, pero siempre teniendo en cuenta el reto que se plantea al principio: la capacidad de gobernanza. Por lo tanto, variables como el mantenimiento o el aumento (idealmente) de la eficiencia, considerando la democracia, la estabilidad, el alcance y la naturaleza de las estructuras institucionales, están casi siempre en el proceso. El artículo analiza la definición de la reforma de las políticas públicas, tomando como caso de estudio el sistema judicial portugués. En este sentido, el artículo considera en sus secciones diferentes dimensiones del proceso de

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REVISTA CIENTÍFICA ACERTTE ISSN 2763-8928

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modernización y reforma, como los motores que motivaron las reformas, el camino recorrido, los momentos y actores clave de las reformas y, por último, los impactos de las mismas.

PALABRAS CLAVE: Política pública. Reforma. Modernización. Gobernanza. Sistema judicial portugués.

INTRODUCTION

Reforms are always challenging. They force individuals and institutions to accept the change of something, perform that change and then do things the way they were newly defined, which requires adoption to those new ways of doing (which usually comes with some resistance).

Furthermore, reforms may also imply that different sectors are involved, in an interdependent way. One cannot promote reforms without consider all the individuals that will benefit from them, but that will be affected as well; without consider all the dimensions (economic, financial, social, political, etc.), the sectors (public, private) and the institutions, being those the direct, but also the indirect involved ones (CHARBIT, 2020; TREIN; MAGGETTI, 2020).

But for a reform to make sense and to be accepted by all the involved ones, there must be a reason (or several and different ones) for it to happen, reforms need to have a meaning and people must envision a motive (or several) for that reform to happen. It is important for people to understand why they should change things, being those changes sometimes very disruptive, which implies new learning processes. If that does not happen that way, reforms may encounter some resistance and the process would be more painful.

Another aspect is the explanation of the path followed by the reforms. For people who is involved in reforms it is important to perceive the change and how is it going to happen: the phases, the ones involved in each phase, which instruments will be relevant, the processes, the resources needed, etc. That way reforms will be easily accepted.

Connected to that it is the understanding of the key moments of the reforms. This will inform about the period when the reform occurs, how long will it take, when will it start, and when will it end. The definition of this period is important in order to know the human, material and economic resources one will need to perform the changes.

And the key actors who will perform that change, who is directly and indirectly involved, who will be affected, which connections must be considered are also relevant dimensions, since those allow everyone to understand their role and their impact in the whole process of change and in each one of the phases.

Finally, the impact is one of the most relevant dimensions to be perceived. What impact do the changes and reforms envision for that specific public policy, for the ones involved and for the territory? What will minor impacts be? Which are the impacts that will immediately be felt, and which ones will be felt only in the future? Are any externalities thought? How will they be included in the reform process? And these are some of the questions that helps to understand the impact the answer to the



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previous questions has in the definition of public policies' reform. Which impact? is the ultimate question since it aggregates all the answers.

This paper analyses the path that a definition of a reform of public policies takes, specifically the reform of the Portuguese judicial system. The paper is organized into seven sections. The first one presents a brief review of the Portuguese judicial system modernization, perceived as a public policy. The sections two to six will answer those questions previously identified. And section seven explains the methodology.

For this paper interviews conducted to key informants placed at the level of the public policies' definition will be analyzed and results will be explored. Also, official document analysis was conducted, and the results will be exposed.

1 PORTUGUESE JUDICIAL SYSTEM MODERNIZATION AND REFORM. BRIEF HISTORICAL REVIEW

In the context of the present paper, Portuguese judicial system is being analyzed as a public policy. As a holistic solution, with impact in individuals' lives and in society management. A policy because it is offered as a way of solving problems, in an aggregated set of solutions, which are present since the individual birth, it includes their social relationships throughout life and end with their death. Public because they are solutions only offered by the State (at least those analyzed here). Furthermore, a system that influences public policies, taking directly (through the Constitutional Court, for example) or indirectly decisions on public policies (TAVARES, 2019, p. 23).

Therefore, the specific public policy is perceived as a process of solving problems. However, the identified problems only result in the development and implementation of a public policy if they are relevant in terms of number of people it affects (SECCHI, 2011, p. 2). Consequently, two conditions must be present for a problem to be considered public: when political intersubjectively actors consider it a problem, and when it affects a considerably number of people in a nefarious way (SECCHI, 2011, p. 7-8). This also implies that the exclusions (meaning, the decision not to solve one problem at the expense of another) are themselves a public policy, because it also implies a public decision (even if it's a non-decision) and because it will also and inevitably affect a considerable number of people (BAPTISTA; POCINHO; NECHITA, 2019, p. 80).

According to Filipe Teles (2020), the last 45 years of democracy (after what has been 41 years of dictatorship regime), the implementation of new practices in the public sector can be characterized by a clear slowness, which was contradicted only by the gradual introduction of new simplification, modernization, citizen proximity, efficiency and transparency processes (TELES, 2020, p. 446-447). However, the author also believes (just like Ongaro (2009) already did) that these processes are being introduced in a micro level of the public management, which does not imply that there was no impact at a macro level (TELES, 2020, pp. 448-449).

As for the Portuguese judicial system modernization and reform the reality was no different from the public administration in general. Dias (2016) analyzes the effects the democratization



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process had on the Portuguese judicial system changes, obviously, after the Revolution of the 25 April 1974. The author concludes that the reforms were more prominent on a theoretical level than on a practical one, more visible in what legislative means was concern, than in courts or even in the application of those legislative tools. That way, one of the major conclusions the author achieves is that a change in the Portuguese legal culture is not only necessary, but mandatory to favor the reform of the judicial system as a whole (DIAS, 2016).

Considering this, Martinelli (2005) and Smith (2003) defined the essential aspects when analyzing modernization processes throughout history. Those are: (1) science and technology development; (2) which contribute for industrialization, that in the reverse direction contributes for modernization; (3) the interdependence between Nations (as a result of the globalization and which in the Portuguese case even more relevance gains, for its integration in a European Union); (4) the constant search for functions' specialization and differentiation; (5) frequency of social mobility situations, mostly at the class system level (increasingly diffused nowadays); (6) political development; (7) secularization; (8) development of new values such as individualism, rationalism and utilitarianism (or at least their emphasis); (9) urban environments increase; (10) privatization of family life; (11) democratization of education, and development of a mass culture and consumption; (12) development of communication tools, which make it possible to shorten distances between people and territories; (13) and compression of time and space (MARTINELLI, 2005, p. 10).

These characteristics are interconnected and are all influenced by one another. And, as it can be easily understood, gain a privileged space when it comes to analyze the Portuguese judicial system and its historical evolution and modernization. For example, science and technology development was crucial for judicial processes and procedures informatization; the integration of Portugal in the UE has greater influence in the way its judicial system is trying to reduce bureaucracy or to give more efficient responses; family privatization contributed for the creation of specialty courts, etc.

In the characterization proposed by Edoardo Ongaro (2009), Portugal is placed as (1) a system of multiple political parties and the organization of majority governance conventions, with a strong government when faced with the need to legislate; (2) the civil service assumes the role of employment policy, which contributes to the increase size of the public sector, contrary to the global trend. Trade unions also play a significant role in public employment policy; (3) accentuated dimension of politicization at the top, albeit with relatively distinct careers; (4) diffusion of patronage practices; (5) the geographical origin of civil servants is uniform; (6) existence of a strong regulatory framework and the abolition of the figure of the mayor; (7) centrality of administrative law; (8) weak civil society; (9) sources of advice in public policies are historically mostly internal, with increasing openness to moments of international and academia reflection (ONGARO, 2009, p. 215-219).

According to the author, all the characteristics indicated above contribute to undermine the efficiency, transparency, proximity, and innovation of the public sector. Being quite visible and important values such as those related to traditionalism. But having the public employment also a



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relevant weight. Moreover, the Law plays an important role in the definition and (not) allowing the modernization process, being its starting point, which translates into slower reform processes. In the specific case of the Portuguese judicial system, and since the sentences are applied having the Law as its guide, this also contributes for a slower, bureaucratic, and complex system (in comparison with the systems where judgements are conducted having the specific case in mind – justice applied to the concrete case) (ONGARO, 2009).

If one analyses the Portuguese Constitutional Governments official documents that provide information on the pluriannual decisions, since 1975, it is possible to conclude that there has been an increase interest in investing in the judicial system reform. Whether by changing processes, intensify and clarify legislation, decrease infrastructures, include Information and Communication Technologies in most of the processes, etc.

In fact, modernization, innovation and rationalization were concepts quite associated to the main economic activities. In this sense, there was the need to modernize agriculture and fisheries, services and Public Administration in general. There was also the urge to modernize and innovate educational programs and curriculums.

From the 7th Constitutional Government program (1981), the title of the document includes the modernization of society, and one may consider that this has to do with the integration of the Internet. In fact, it is included in the document the legislative modernization, in order to deal with fiscal, economic and commercial demands.

In the 8th Constitutional Government program (1981-1983) the modernization process was associated with the European integration. But there were no news regarding to the sectors that would be the focus of that process. And that was the path followed by the next three Constitutional Government programs.

However, in the 12nd Constitutional Government program (1991-1995) Justice modernization appears explicitly, with the informatization of the services provided to citizens (such as registrations and notary) being a specific modernization project. From this point on, modernization is always present at the Justice level, whether applied to the services, to the internal procedures (for example, communication channels), to the reform of the Judiciary Police, the Courts, to the magistrates' training, and to the legislative reforms as a whole.

For the achievement of this conclusions, two analyses were performed: the first one was the understanding of the Constitutional Government programs since the first democratic regime (1976-1978). In this analysis it was important to add the variable Pedroso, Trincão and Dias (2003) suggest, namely, the Type of reforms one was dealing with. There was a period of great instability, reflected at various levels: social, economic, political, legislative... Which did not favor the modernization processes, since the goal was to achieve, precisely, that stability of those areas and of the Country.

However, when this stability started to be seen as possible, the documents predicted the modernization process at a more intrinsic and ambitious level. Also, this was a result of the European integration demands.



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The second analysis followed the Martinelli's guidelines (2005, p. 29).

Both analyses completed each other and were important for the understanding of the Justice modernization process in the past 45 years.

2 METHODOLOGY

The paper focus is the Portuguese public policies' reform definition, specifically the judicial system, perceived as a public policy.

To achieve the goal of analyzing the path taken to modernize public policies in Portugal, the paper followed two complementary techniques: document and interviews' analysis.

The documents selected were the ones that establish the great lines for Government ruling: Constitutional Government programs, since 1976 until 2023. The period is the one, in Portugal, that has available Constitutional Government programs, since the period before that followed a dictatorship, and after 1976 democracy was instituted.

22 documents were analyzed, specifically the judicial system modernization. In fact, the focus was the understanding of the most important guidelines the Government followed and that is present in tables 1 and 2.

In this analysis, one also intended to understand the evolution of the judicial system modernization over the years, the EU role in the entire process and the interconnection between actors and departments. Martinelli's analysis grid was a great instrument to achieve the goal.

After that, it was possible to complement the information retrieved from the documents with interviews. These took place between March and July 2021, most of them online (the only ones that were written, because of agenda difficulties, were the ones of the Minister of State Modernization and Public Administration and Minister of Justice).

All the interviews were recorded and transcribed and follow the guidelines of data protection and consent forms. Table 1 shows the interviews conducted.

Table 1. Conducted interviews

Contact/Key informant	Period	Government role
Joaquim da Costa	June/2011- October/2015	Secretary of State for Administrative Modernization
João Farinha	Current	Advisor of the Secretary of State for Digital Transition
Alexandra Leitão	Current	Minister of State Modernization and Public Administration
José Macieira	Current	Advisor of the Secretary of State for Justice
Maria de Fátima Fonseca	Current	Secretary of State for Innovation and Administrative Modernization
Rui Batista	Current	Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office
Anabela Pedroso	Current	Secretary of State for Justice
Francisca Van Dunem	Current	Minister of Justice



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3 DRIVERS OF THE REFORMS

From the analysis of the tables attached, meaning, from the analysis of the 22 different Constitutional Government programs, it is possible to conclude that there was a clear transformation regarding the Government priorities. If, after 41 years of dictatorship, the focus was to provide a sense of stability at the various dimensions of society: economic, political, internal and external. This focus changed when the need to become a member of an international/European organization emerge. And then there was the world economic crisis which brought other different needs and priorities. And, consequently, different modernization paths were followed throughout the years.

As Fonseca and Carapeto (2009) claim:

*"[...] public administration reform process is a global phenomenon, which includes organization and management reforms and political system reforms (politics) and of some important policies [...]. In some countries, this movement was named reinventing government, in others new public management, and in many others State modernization or reform, always assuming that this should be redesigned to perform a set of fundamental functions with competence and quality."*¹ (FONSECA; CARAPETO, 2009, p. 75).

So, the reasons why modernization processes and reforms of Portuguese public administration occur are different and related to many factors: to the need of distinguish dictatorship from democracy; to answer to external demands; to respond to a crisis period and/or to follow other Countries and their economies.

The interviewees explain some of the motivations for the public administration modernization, specifically the judicial system:

"The main goals of administrative modernization were accessibility, transparency, the existence of a single interlocutor (physical or digital) in the State's relations with citizens and companies, and the rationalization of State resources." Alexandra Leitão, Minister of State Modernization and Public Administration.

"[...] the main motivation has to be to better serve citizens and companies, right?! And we have that vision of the State, of someone who is sitting and acting in a monolithic way, but, in fact, the main motivation of the people who work here is to provide public service and it has to be that way, without ever stop being like that." João Farinha, Advisor of the Secretary of State for Digital Transition.

"Meeting these demands [greater efficiency and transparency, agility and speed in the resolution of processes, or even in the responsiveness and readability of services for the citizen] has been the touchstone for the modernization of Justice, which requires a new innovative thinking and practices that place the needs of people and businesses at the center of justice institutions, policies and services." Francisca Van Dunem, Minister of Justice.

4 PATH FOLLOWED BY THE REFORMS

According to Hood (1991) and Dunleavy and Hood (1994), the late 1980s, early 1990s witnessed the transition from a traditional or 'progressive' public administration to a New Public

¹ Translation provided by the authors.



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Management (NPM). The characteristics pointed out by Gray and Jenkins (1995) to this NGP are the tendency to obscure or eliminate the distinction between the public and private sectors (government as a company) and to treat the public sector as homogeneous; more flexible and adaptable organizations with flatter and more focused structures that encourage entrepreneurship rather than bureaucratic management and more flexible personnel regimes; reinventing government with structures that are mission rather than rule-driven, decentralized and entrepreneurial; the current political system being inefficient. And what was previously viewed as positive (bureaucratic routines and professional codes of conduct) is evaluated as costs rather than benefits (GRAY; JENKINS, 1995).

Although there is, in fact, a gap between what would be NGP's objectives and what is implemented at the macro level, this does not mean that at the micro level there are no innovative and changing processes, of adaptation to new societal demands, with processes' flexibilization and use of new information and communication technologies (ONGARO, 2009, p. 240-241). This is evidence in the Portuguese judicial system. Courts are perceived as sovereign bodies, heavy structures, but at the meso and micro level, as well as their structure and organization have undergone changes over the last few years, which justify consider that there is a combination of tradition and modernization.

"What is perceived as a policy problem? How and when does a policy problem get on the government's agenda? And why are other problems excluded from the agenda?" (JANN; WEGRICH, 2006, p. 46) are some of the questions that pop-up when it comes to understand how public policies modernization is defined.

For those questions to be answered, it is relevant to analyze interviewees' discourse:

"We did it [improve the quality of public services provision] with the instruments identified above, not only in a participatory, transversal and innovative way, but above all with an inclusive concern, trying not to leave anyone behind, with complementary and adjusted solutions to the target." Alexandra Leitão, Minister of State Modernization and Public Administration.

"[...] the most important part we have to do when talking about judicial system modernization is first realize what the situation is, what the problems are and, above all, try to find quick solutions, but always with the protagonists, because otherwise the relationship of trust will get lost." Anabela Pedrosa, Secretary of State for Justice.

"[...] the path began with the preparation of an action plan, ambitious, but pragmatic, transversal and participatory, which organized thought and execution, allowing us to follow the entire process of digital transformation that was intended to be built." Francisca Van Dunem, Minister of Justice.

As Jann and Wegrich (2006) conclude: "During this stage of the policy cycle, expressed problems, proposals, and demands are transformed into government programs. Policy formulation and adoption includes the definition of objectives — what should be achieved with the policy — and the consideration of different action alternatives." (JANN; WEGRICH, 2006, p. 48).

For this to occur, Bridgman and Davis (2003) proposed a model. The authors believe that "A policy cycle starts with a problem, seeks evidence, tests proposals and puts recommendations before Cabinet. Its outcomes are subject to evaluation and the cycle begins again." (BRIDGMAN; DAVIS,



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2003, p. 102). This model can be seen in figure 1 and follows a circular path and, for that reason, it is never fully completed, because when the modernization process (or the policy definition) is in its evaluation stage, new issues are identified.

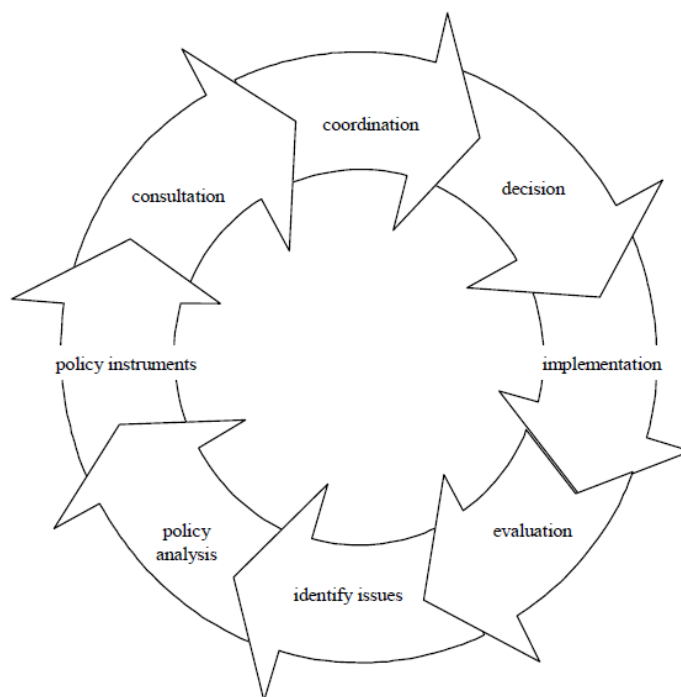


Figure 1: The Australian Policy Cycle (Bridgman and Davis 2000:27) cit. in (Bridgman & Davis, 2003, p. 100)

5 KEY MOMENTS OF THE REFORMS

One of the questions interviewees were asked was in which time horizon they thought the challenges the public administration modernization (and the judicial system reform and modernization, in particular) impose would be fully addressed. Meaning, in how many years they believe the challenges and/or obstacles would have a full response.

Against all odds the given answers did not exceed the five years' time horizon. In fact, considering all the work that has already been done in the past 47 years (if one has in mind the end of the dictatorship regime - 1974) or 35 years (if one considers Portuguese EU integration - 1986), it is understandable that the interviewees believe that all the challenges that are perceived as relevant in the present moment (or the major ones at least) would be addressed in such short time. Moreover, the legislature period is established in four years, which make it harder to define a modernization or reform program for a more extended time horizon.

However, it is not hard to convey that modernization, innovation, and reforms are continuous processes, that do not cease to happen, whether by changes in leaderships, or because new tools are included in society. In the case of the last 25/30 years Information and Communication Technologies have been playing an important role and will continue to do so.



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In fact, the year of 1986 marks the period when a more complex and broad process starts: the designated Europeanization, defined by the way the Portuguese EU integration molds and influences the decisions (macro and micro) that are taken at various levels.

Europeanization, considered as a process that gives dynamism to the changes operated at the public policies' various levels (micro, meso and macro), also implied a certain pressure so that reforms and modernization of various public sector entities could take place (ONGARO, 2009, p. 238-239). Within these is the Portuguese judicial system.

"I would say that we support everything we are doing in what are the regulations, the principles, which is the basis that the European Union has given us. Because, in the context of the judicial system, the e-Justice Action Plan, the entire strategy that we have been developing in Portugal is supported by what, in Europe itself, was being done even in the context of European networks, of the action program of electronic justice. Even the funds come from that area. Justice is very transversal from this point of view, but also to the criminal area, in the context of the PJ [Judiciary Police] it was also very linked to all the European Union principles. Therefore, I would say that Portugal would not be in the current stage, from the point of view of technologies in Justice, if it didn't have this great support, which was the management and regulation that came from Europe itself." Anabela Pedrosa, Secretary of State for Justice.

But when will the current modernization challenges be fully addressed? The interviewees answered in the following terms:

"But I think maybe in 3 years' time, I'm being a bit optimistic and I'm thinking about the recovery and resilience plan, if you look at the plan, [...] the version that was discussed in public session has there I think 267 million of investment in Justice. If you are going to see this page, it is digital. This, of course, [...] the importance of Europe here is evident. [...]" Rui Batista, Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office.

"[...] in terms of the next 4 to 5 years, we will have the resources to make some fundamental interventions in terms of modernization and, therefore, it will be, in fact... We will manage to implement many projects that were in the drawer for a long time. Now, it is also a challenge to execute." João Farinha, Advisor of the Secretary of State for Digital Transition.

"Justice, as you know, is one of the few ministries that has been contemplated with this great modernization program, we have around 270 million to be able to modernize Justice from one end to the other. But this technological modernization, I'm only sure that it will be successful if I have capable people to be able to do the work, so our first investment is there, in creating internal conditions for improvement, training, project management, what we call PMOs, etc. It is the great work that we are, at this moment, starting in Justice." Anabela Pedrosa, Secretary of State for Justice.

As one can perceive, in the present moment, at the level of Justice modernization, the discussion takes place around the recovery and resilience plan, which, in simple terms, is the European Union funding to elevate Countries from the crisis caused by the pandemic. To what Portugal is concerned, the modernization of Public Administration, in general, and Justice, follows the path of providing the technological means to transform them to accomplish the values of: simplification, streamlining, de-bureaucratization, dematerialization, rationalization, efficiency,



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openness, participation, proximity, transparency, among many others. Values that are in line with the structure of NPM (GRAY; JENKINS, 1995).

6 KEY ACTORS OF THE REFORMS

The question “Who?” when the goal is to understand the people involved in the definition of public policies and/or its modernization hardly will have only one answer or one person to identify. As Blom-hansen (1997) states: “Formulating and implementing policies is seen as involving increasing numbers of different institutions and organizations. Interdependencies prevail. Responsibility is diffused. At the same time, coordinated action is seen as more and more necessary as the societal problems get more and more complex.” (BLOM-HANSEN, 1997, p. 670).

What is being studied in the paper is the public policies’ modernization defined by the central government and some of its different units (specifically, Ministries with a role in defining the judicial system modernization). But in this research, it is of great relevance the role of the network created between the European Union and that central government, being most of the more important guidelines of the judicial system processes’ modernization decided at a European level.

Thus, this implies that, in addition to the guidelines’ emanation and collaboration and top-down interoperability (EU-Government), also bottom-up direction will have to be considered, with the network established at the level of the central Government and the local judicial system (Courts, Public Prosecutor, JP, etc.).

As several interviewees confirm:

“Interoperability is the great challenge and at the same time the great opportunity that the Public Administration will have to face in the future.” Alexandra Leitão, Minister of State Modernization and Public Administration.

“[...] this is the strategy, and that is why interconnection is also fundamental, we want and we are in gradual articulation to create interconnection structures with the digital systems of our main partners, who we know who they are, the criminal police bodies by nature, Judicial Police, Public Security Police, Republican National Guard, but also, for example, we now have another project, the AMA [Administrative Modernization Agency], which is part of this linking strategy. We want our computer system to be coherent with other digital systems. There are many public services that are behind, but that are all investing in digitization right now, to link with our system.” Rui Batista, Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office

“One of the things that is essential and that gave rise to UMIC [Knowledge Society Agency], that had its origin in AMA is the need for services and digital information and services, etc. work in coordination. Because one of the biggest Government problems is the Ministries separation and the existence of General Directorates, each one with the “King in his little farm” and not communicating. And, therefore, one of the great tools of information technology organization of the State must be sharing and working together, and many steps have been taken in this direction.” Joaquim Costa, Secretary of State for Administrative Modernization (between June 2011 and October 2015).

Back in 1986, when defining an agenda for the study of institutions, Ostrom already shared this idea of the importance of communication between actors and how and why their functions should



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be well defined. The author identified the following areas that must be studied with seven classes of rules stating relations between participants, positions, actions, and outcomes:

- (1) *Position rules which specify a set of positions and how many participants hold each position.*
- (2) *Boundary rules which specify how participants are chosen to hold these positions and how participants leave these positions.*
- (3) *Scope rules which specify the set of outcomes that may be affected and the external inducements and/or costs assigned to each of these outcomes.*
- (4) *Authority rules which specify the set of actions assigned to a position at a particular node.*
- (5) *Aggregation rules which specify the decision function to be used at a particular node to map actions into intermediate or final outcomes.*
- (6) *Information rules which authorize channels of communication among participants in positions and specify the language and form in which communication will take place.*
- (7) *Pay-off rules which prescribe how benefits and costs are to be distributed to participants in positions. (OSTROM, 1986, p. 17).*

Sociological institutionalism already pointed out the importance of communication and its role in generating, deliberating, and/or legitimizing ideas about political action in institutional context (SCHMIDT, 2011, p. 76).

In this section it is also important not to forget the role of EU, perceived as an actor that not only finance plans and programs, but also that defines politics, instruments, and paths.

"I would say that we support everything we are doing in what are the regulations, which are the principles, what is the basis that the European Union has given us, because, in the context of the judicial system, e-Justice Action Plan. The entire strategy that we have been developing in Portugal is supported in Europe, in what is being performed in the context of European networks, in the action program of electronic justice, even the funds come from that area." Anabela Pedroso, Secretary of State for Justice.

"But all this collaborative work, informed between States, is also putting issues on the agenda, which are key issues for modernization, such as the need to guarantee interoperability between the States' digital service platforms, so that we can have cross-border services that feed the European Single Market, like the security and privacy rules..." Maria de Fátima Fonseca, Secretary of State for Innovation and Administrative Modernization.

"There is pressure from the European Union to modernize through funds. And the funds have very precise purposes. Funds is not receiving money to be used as you like; it is receiving money to achieve the intended goals. And in the matter of State modernization, the objectives were indirect, that is, the European Union does not give money for the State to modernize itself, as if this were an end. It gives money for the State to modernize, because this is essential for the competitiveness of the economy [...]." Joaquim Costa, Secretary of State for Administrative Modernization (between June 2011 and October 2015).

7 IMPACTS OF THE REFORMS

The study and understanding of public policies' impact has been taken for years now and in several dimensions (BÖRZEL; RISSE, 2007; BELADI; SINHA; KAR, 2016; BATISTA; DOMINGOS, 2017; BOSWELL; SMITH, 2017). The relevance of measuring impact is related to the capacity of



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understanding if a specific implemented policy produced the expected results and/or if it has resulted in different and unexpected consequences.

For that evaluation, the definition of a public policy must envision its impacts from the start. And how that public policy and its results would be evaluated. That is to be possible its measurement and its change (if the results are negative).

As Alexandra Leitão states, challenges' anticipation is a way of predicting impact and it has a relevant role in the definition of a modernization process:

"It should be remembered that modernization processes and practices are fundamentally centered on innovation in policies for welcoming and attending to citizens and companies, administrative communication, simplification of procedures, involvement of interested parties and the production and processing of information for management. These diverse components contribute to the continuous improvement process of the administration, which has to be responsive to contemporary needs and trends, while being able to anticipate and subsequently plan responses to future challenges." Alexandra Leitão, Minister of State Modernization and Public Administration.

So, the territory and its residents, public policy' users, but also the ones that are going to implement it should be involved in the definition process, not only in the way of understanding how they are going to deal with the public policy that is being defined (in the specific case of this paper, the judicial system modernization), but, and most important, how the modernization process will affect their lives and the territory.

Nowadays, changes and its impact in the present, but also in the future; minor and major impacts, externalities; inclusion of those impacts (negative and positive) in the definition process of future public policies; the ones impacted; decisions on how to deal with minor and major impacts; etc. are all parameters considered when public policies are defined. And most of them because of European imposition.

The interviewees' discourses already include this impact dimension when they exemplify the definition of a public policy, as something that is inherent:

"Occurred by the end of 2019, I think this small innovation of trying to perform the digital transition, but with a comprehensive vision for the governance was a key moment. In the previous Government, and despite still being a relatively small project with little impact, the creation of an experimentation laboratory and the introduction of design thinking methodologies and greater participation of citizens and of civil servants in the processes' design, in their redesign, in creating new public services and, therefore, the creation of the LABx², even though it is a very small project and whose impact is still far from what it should be, I would also highlight as an important milestone." João Farinha, Advisor of the Secretary of State for Digital Transition.

The previous questions result on the consideration of the impact relevance. The definition of why, how, when and who allows the measurement and evaluation of the impact at all those levels and the definition of new (or old but changed) public policies to diminish negative impacts and/or

² <https://labx.gov.pt/?lang=en>



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externalities. And this is quite relevant when it comes to define judicial system processes' modernization, mainly because of the vulnerability that citizens face when they have to look for a problem solution in Justice.

CONCLUSIONS

The path to the definition of public policies' modernization is very complex and follows many directions. The first reason for that is the obvious existent complexity in the unit of analysis. Even if this unit is reduced (which it was, to the judicial system), it also includes many parameters, actors, instruments and connections.

The paper followed a line of understanding that path by considering the origins and by trying to answer the basic questions. So, after a brief historical review of the Portuguese Judicial system modernization and reform, where some of the projects developed in the judicial system were mentioned, but, and most important, the elemental Government documents were analyzed, the goal was to be able to answer the questions that all projects need to answer to find the path which must be followed. That way, one believed it would be possible to understand what was in the basis of the modernization process definition.

The documents' analysis allowed to conclude that there were some relevant milestones that must be highlighted: the first Constitutional Government program, from 1976, which was the beginning of a democratic regime in Portugal. This document, more than a working one, can be considered as an important manifest, which distinguish from what were the beliefs and the living until that period.

Understandably, the next following years were political unstable, with succeeding Governments, a lot of changing and refreshing ideas, but with hard time making them possible. However, those years were of great importance, since they allowed the Country to perceived which way to follow.

After 1980, there was this major goal to integrate the European Union, and this marked the political, economic, social, juridical, and cultural ambitions. The integration occurred in 1986, but the Country needed to be prepared for this. And this is something that still happens nowadays, with the European guidelines being followed in order to be part of that Union.

Then, after several years of trying to grow and gain stability, in 2008/2009 a world crisis erupted and changed all the priorities. Finding answers to social problems was the major one and all the other dimensions followed this one.

Finally, in 2019, like the entire world, the Country was devastated by the COVID-19 pandemic. Even though Portugal seemed better prepared than for the 2009 crisis (and being part of EU turned out to be decisive), in a time when it was trying to find its automatic pilot regarding the modernization processes, and the inclusion of technologies, the pandemic forced this to happen, whether in education, politics, economics, and (to what the paper is concerned) judicial system.



REVISTA CIENTÍFICA ACERTTE ISSN 2763-8928

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After this analysis, it was time to answer the questions which would allow to understand the definition process basis when it comes to modernize the judicial system: why modernize? How to do it and when? Who should be involved in the process? And what impacts are expected?

Relevant for answering those questions, was the analysis of the conducted interviews with key informants, placed at the level of the modernization definition process, whether at a broader stage (Public Administration), or even at a more restricted one, the judicial system.

The answer to the question why modernizes and why do it at the judicial system level is related to the necessary evolution that system requires. People look for transparent, closer, understandable, and efficient answers to their problems. Judicial system modernization helps to meet that need.

The question how is one of the most complex since the way modernization was conducted followed several and different paths. However, the goal was always one, allow citizens to have access to Justice, being this the possibility to understand the system and being part of it in a comprehensive way.

Being most of the modernization plans defined for the legislature period (4 years), most of the modernization processes are drawn for this time horizon. But there was a change felt at this level. If, in the first Constitutional Government programs, the plans followed exclusively this period. Mostly, since the beginning of 2000, one may find a continuity between programs. These ones did not start from scratch, they continued the work already started and appropriate public policies that found to be useful. This was a major change in the mindset.

Regarding the question: who should be involved? The answer is: everyone. Meaning, everyone which is directly and/or indirectly involved in the modernization process. All the professionals (judicial professionals), but also the citizens, academics, political decision makers, and the EU. And this happens at an interdependency dimension, meaning there are several departments, from different areas involved and consulted.

Finally, the impacts sum up the previous questions and answers. It is from the answers given previously that the impacts are thought and revealed. It is for the impacts that the questions are placed, and it is also for them that the answers are searched. But, for that, the plan must start by defining what will be measured and evaluated and how. The major goal is always to have positive impact in people's lives, mostly because it includes sensible matters the main modernization processes defined, the ones involving judicial subjects.

Finding answer to the questions highlights a similar motive: being part of the EU implies modernization, new ways of governance, and all the requirements this also entails: transparency, proximity, efficiency, simplification, and efficacy. When it comes to define modernization processes to apply to the judicial system, this EU integration and its principles and values must be considered from the beginning.



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ISSN 2763-8928

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ARTIGO 4

Melro, A., Teles, F. & Oliveira, L. (2022). Relevant Stages, Actors, and Instruments in the Portuguese Judicial System Modernization Process. *Journal of Public Policy and Administration*, 6(1), 38-48. Disponível em

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Relevant Stages, Actors, and Instruments in the Portuguese Judicial System Modernization Process

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To cite this article:

Ana Melro, Filipe Teles, Lúcia Oliveira. Relevant Stages, Actors, and Instruments in the Portuguese Judicial System Modernization Process. *Journal of Public Policy and Administration*. Vol. 6, No. 1, 2022, pp. 38-48. doi: 10.11648/j.jppa.20220601.16

Received: January 24, 2022; **Accepted:** February 8, 2022; **Published:** February 25, 2022

Abstract: Modernization processes occur by following some type of previously defined stages or phases, which intend to have as a result the efficiency, efficacy, transparency and closeness to the citizen, namely, if one is referring to the modernization of public policies. The paper presents the results achieved with three research analysis performed: the first one applied to official Portuguese Governmental documents (specifically, legislature programs, since 1975), following Martinelli's guidelines; the second considering the interviews' content analysis conducted to key actors positioned at the level of public policies' definition, specifically, to what the Portuguese judicial system is concerned; and the third one which was the NVivo analysis applied to those same interviews. To the modernization processes that have been happening in the last 10 years, interviewees highlighted the challenges faced, various key moments linked to specific projects and the relevance of Information and Communication Technologies. The main research goal was to understand how the Portuguese judicial system modernization processes happen, considering the different dimensions of the judicial system and of the modernization process. It was possible to conclude that several external events, such as economic and public health crises, have a major influence on judicial system modernization processes. All the actors involved are relevant for the reforms, whether at an upstream or downstream level. With the European Union having a relevant role. Instruments such as laws, platforms, work management tools also assume an important role. However, the highlight of the judicial system modernization processes' instruments goes to the Information and Communication Technologies and the infocommunicational competences.

Keywords: Modernization, Reform, Portuguese Judicial System, NVivo Analysis, Qualitative Methods

1. Introduction

Public policies' modernization can be based on different motivations. Considering the judicial system modernization, motivations don't differ much from one country to another, especially if one is talking about European Countries [4-7]. Modernization goals often include the achievement of efficiency, efficacy and transparency. This is very well stated in literature, whether if the reference is to the modernization of the system as a whole [8-11], or to the introduction of a different process or instrument [12-14].

The present paper is one of the results of a research project which aims to understand the major reforms the Portuguese

judicial system has suffered in the past 47 years, since its democratic transition, with a particular emphasis on Portugal's European Union integration, in 1986. These two moments are of great importance when it comes to understand the changes in Portuguese public policies formulation processes. The end of the dictatorship period contributed for the Country's priorities change. The European Union integration brought new challenges, demands, but also benefits.

The goal of this paper is to clarify the relevant stages, actors and instruments in the Portuguese judicial system modernization process. In order to do so, three research steps were considered: documental analysis to the official Portuguese Government documents, i.e. Government

Programs since 1976 until 2021, following the guidelines of Martinelli [15]; the second phase was the interviews conducted to key actors placed at the public policies' definition level (which are under analysis in the present paper, namely, NVivo analysis); and the last and following phase is the interviews conducted to key actors placed at the judicial system implementation level.

This techniques' triangulation allows the researchers to better understand the Portuguese judicial system modernization process. And specifically this paper reflects on the importance of quantitative analysis (NVivo data) applied to qualitative results, meaning the numerical analysis applied to the conducted interviews [16, 17]. Because of the relevance the research technique has, the methodology section is the first one.

In this methodology section the NVivo analysis is explained, and the results are shown, as well as the interviews conducted and their main goals.

The following sections are the analysis of NVivo results. The main references retrieved from the NVivo analysis applied to the interviews will be explored. So, section two presents a brief characterization of the main historical

moments of the Portuguese judicial system modernization processes. Section three elaborates on the motivations for Portuguese judicial system modernization processes to happen, focusing also on the main projects that were developed in the last few years, also including some excerpts from the interviewees' discourses. Section four discusses the challenges faced by Portuguese judicial system modernization processes.

Finally, the paper elaborates on some conclusions and suggests future research paths considering the results achieved so far.

2. Methodology

The analysis presented in the paper follows both qualitative and quantitative strategies. First, eight interviews were conducted with key actors (see Table 1), particularly relevant in the process of policy formulation, namely given their role in the definition of the major guidelines for the Portuguese judicial system. Then, the authors chose to provide complementary quantitative data, relevant for a comprehensive understanding of the achieved results.

Table 1. Conducted interviews.

Contact/Key informant	Period governing	Government role
Joaquim da Costa	June/2011-October/2015	Secretary of State for Administrative Modernization
João Farinha	Current	Advisor of the Secretary of State for Digital Transition
Alexandra Leitão	Current	Minister of State Modernization and Public Administration
José Macieira	Current	Advisor of the Secretary of State for Justice
Maria de Fátima Fonseca	Current	Secretary of State for Innovation and Administrative Modernization
Rui Batista	Current	Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office
Anabela Pedroso	Current	Secretary of State for Justice
Francisca Van Dunem	Current	Minister of Justice

NVivo software was used in order to study qualitative data, as it helps to "implement some type of a conceptual map in a free format kind of way for a variety of purposes, such as decision making and educational applications" [18]. In the study, the interviews' NVivo analysis provided a way of achieving an expected result, which was to prepare the second phase of the methodological procedure.

The advantages of using computers and software to examine interviews are well established. Bardin and coauthors [19] stated:

[...] the speed increases; there is an increase in accuracy in the research organization [...]; flexibility remains [...]; the reproduction and exchange of documents (between

researchers) are facilitated by standardization and storage (data and material bank); the manipulation of complex data becomes possible; creativity, reflection, theoretically have a prominent place since the analyst is placed away from laborious, long and sterile tasks. [19].

However, when using NVivo the researcher should be aware that categorization and codification are carried out by him/her, which can bring some subjectivity to the process [19]. Therefore, considering the goals of the research project and of the interviews, category trees and relationships between them were created. This first phase allowed to perceive which categories were most relevant and to establish some comparisons. The following Tree Nodes were defined:

Table 2. Categories for the interviews' analysis with NVivo.

Category	Subcategory 1	Subcategory 2
Europeanization	Direct influence	Instrumental influence
		Legal and juridical influence
	Procedure influence	
Indirect influence	EU integration	Instrumental influence
		Legal and juridical influence
		Procedure influence

Category	Subcategory 1	Subcategory 2
Innovation	<i>Actors</i>	
	<i>Instruments</i>	
	<i>Hierarchical models</i>	
	<i>Processes</i>	
	<i>Challenges</i>	
	<i>Interaction between actors</i>	
	<i>Key moments</i>	
Modernization	<i>Motivations</i>	
	<i>Procedures</i>	Processes' definition Services' organization
	<i>Processes</i>	External communication Internal communication
	<i>Projects</i>	
	<i>Information and Communication Technologies</i>	Infocommunicational competences
Public Policies	<i>Macro</i>	
	<i>Meso</i>	
	<i>Micro</i>	
Judicial System	<i>Magistrates</i>	
	<i>Criminal Police Bodies</i>	
	<i>Projects</i>	
	<i>Judicial Secretaries</i>	
Tradition	<i>Culture</i>	
	<i>Interaction between actors</i>	
	<i>Procedures</i>	
	<i>Processes</i>	

Interviews were analyzed considering this categorization. Although some categories and subcategories were defined, they weren't mentioned in the

interviews, which is reflected in the next table. The authors chose to highlight the categories/subcategories with 10 or more references.

Table 3. Interviews' analysis with NVivo.

Category	Subcategory 1	Subcategory 2	Source	Reference	
Europeanization			3	4	
	<i>Direct influence</i>			3	5
			Instrumental influence	6	10
			Legal and juridical influence	3	3
	<i>Indirect influence</i>		Procedure influence	6	8
				0	0
			Instrumental influence	1	1
			Legal and juridical influence	0	0
			Procedure influence	1	1
				1	1
Innovation	<i>EU integration</i>		2	2	
	<i>Actors</i>		6	10	
	<i>Instruments</i>		3	10	
	<i>Hierarchical models</i>		2	2	
	<i>Processes</i>		1	1	
	Modernization			3	5
		<i>Challenges</i>		8	38
		<i>Interaction between actors</i>		7	17
		<i>Key moments</i>		6	27
		<i>Motivations</i>		4	8
<i>Procedures</i>			0	0	
		Processes' definition	6	9	
		Services' organization	4	5	
<i>Processes</i>			2	2	
		External communication	2	3	
	Internal communication	1	1		
	<i>Projects</i>	6	27		
	<i>Information and Communication Technologies</i>	7	27		
	Infocommunicational competences	6	13		
Public Policies			0	0	
	<i>Macro</i>		1	1	
	<i>Meso</i>		0	0	
	<i>Micro</i>		0	0	

Category	Subcategory 1	Subcategory 2	Source	Reference
Judicial System			2	8
	<i>Magistrates</i>		1	6
	<i>Criminal Police Bodies</i>		0	0
	<i>Projects</i>		3	10
Tradition	<i>Judicial Secretaries</i>		0	0
			5	7
	<i>Culture</i>		5	7
	<i>Interaction between actors</i>		2	3
	<i>Procedures</i>		2	2
	<i>Processes</i>		1	1

The most mentioned subcategories include: the instrumental European influence (10); the actors (10) and instruments (10) involved in the innovation process; the challenges (38), interaction between actors (17) and some key moments (27), the projects (27), Information and Communication Technologies (27) and, related to those, the infocommunicational competences (13) of the modernization process and the projects (10) of the judicial system.

In a brief and initial analysis of these results, and in comparison, to the less mentioned subcategories, one can claim that modernization is taking over tradition, specifically to what the judicial system is concerned. And this evidence can be explained by the ease of access and usage that Information and Communication Technologies provide. However, this evidence does not come without challenges, for example, the actors' infocommunicational competences and its development.

In the following sections, NVivo results will be explained and deepened, considering the highlighted references.

3. Historical Characterization of the Portuguese Judicial System Modernization Processes

The characterization of the Portuguese judicial system (or other Portuguese public policy) must consider the relevance of the democratic transition in 1974. The definition of what were the new public policies' democratic guidelines should never ignore this important mark, and the judicial system was no exception [20]. As João Paulo Dias stated, "The courts and the judicial system as a whole are not, in general, a priority for the new political actors, who are more concerned with stabilising the political system, the functioning of public services and economic recovery" [20]. And this is quite evident when one analyses the official governmental documents, specifically, the Government Programs since 1976.

The results from that analysis, which followed Martinelli's guidelines [15], showed that the judicial system reform and modernization occurred in circles, meaning, each new program established the focus on legislative changes, namely, the penal and civil codes, the training of the magistrates, the changes in registrations and notaries processes, the inmates' conditions and their social rehabilitation, the creation and development of alternative means of dispute resolution. And,

even though, 1986 was also a notable year in this matter (because of Portugal European integration), the proposals were basically the same, but having as a major concern the adoption of all the changes accordingly to European directives¹.

However, in recent years the focus of judicial system reforms and modernization is being placed on its efficiency, efficacy, transparency and access to law and Justice [8, 9, 12, 13]. i.e., there has been a qualitative change in what the priorities are in this matter, from a more theoretical vision of the judicial system (with important needs being highlighted) to a more operational one. This last approach proposes concrete projects to fulfill the objectives previously mentioned (efficiency, efficacy, transparency, and access to law). This evidence is not only present in our analysis (table 2), but also in the excerpts from the interviews:

"Europe and the whole world, but I know Europe better, it's making a big investment in digitization in the area of Justice, because it realized that Justice cannot remain outside the digital issue [...]" Rui Batista, Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office (since 2019).

"The commitment to mediated digital, through the opening of several Citizen Spaces – managed by local authorities with the support of AMA [Administrative Modernization Agency] – is one of the ways found to provide proximity responses to populations, for example, in accessing digital public services." Alexandra Leitão, Minister of State Modernization and Public Administration (since 2019).

"In recent years, in the current Government, the current legislature has also tried to give new impetus through a set of strategies, including the Action Plan for the Digital Transition [...]" João Farinha, Advisor of the Secretary of State for Digital Transition (since 2019).

"The digital transformation is not a transformation that is made only by technology. Therefore, we have several factors here. We must talk about a new culture of service, but in the case of Justice there is no possible reform without a normative component. And I think that the hardest part. But also, the most gratifying part that we managed to achieve was, in 2017 and 2018, moving forward with the regulations and then with everything that gave rise to the dematerialization of the legal process." Anabela Pedroso, Secretary of State for Justice (since 2019).

"Aware of the technological and humanization issue, the

¹ This analysis resulted in a paper which is in the process of being published.

Ministry of Justice has been investing intensively, since 2015, in the modernization of the Justice system, with the introduction of new procedures and technologies and the implementation of administrative and legislative measures, to make the Justice closer to citizens and thus contribute to strengthening the democratic rule of law and strengthening citizenship.” Francisca Van Dunem, Minister of Justice (since 2015).

The current pandemic crisis had (and still has) great influence in modernization and reform processes, including the judicial system, whether by boosting or delaying them. To what Portugal is concerned, a Recovery and Resilience Plan was elaborated, under the EU’s strategy, to be a response to what the major consequences of the crisis. In fact, the effects of the pandemic in judicial systems’ modernization processes were already considered in previous research. Some emphasized the working conditions and the importance of telework [21], other analyzed the performance of the judicial power [22], by explaining some of the reforms performed at the judicial level [23], or how some areas of the system managed to work in such difficult times [24].

The Recovery and Resilience Plan is also perceived in NVivo results, whether in the subcategory of the European direct influence or by the challenges faced by the modernization processes. It was also clearly mentioned by the interviewees:

“The Ministry of Justice is responsible for the Courts’ app, it is developing a new process, it has been doing it for about three years. It will also be essential in the Resilience and Resolution Plan. There is part of Justice there, which is to develop the new magistrate’s application, it is called Magistratus for judges and MP codex for the Public Prosecution. It is a processes’ digital deployment app, closely associated with the idea that everything in the process has to be digitized, including search engines in the process itself.”
Rui Batista.

“[...] The modernization process is based on three instruments that work in an articulated and transversal way: the Strategy for Innovation and Modernization of the State and Public Administration 2020-2023, as a definition of the guidelines for the Government’s action; the Simplex, as an action plan with 158 measures; and the Recovery and Resilience Plan, focused on the response to the crisis, supported by European Union funds.” Alexandra Leitão.

In general, one can characterize the Portuguese judicial system with its focus on digitization and flexibility. Both characteristics being starting points for the citizen proximity and as a way of achieving more transparency, efficiency and efficacy. However, those modernization processes and reforms are not being implemented at the desired pace, whether because crisis appear along the way (the 2008/2009 financial crisis or the COVID-19 crisis), or because the judicial system demands caution when it comes to implement changes in its processes.

Next, the paper will focus on modernization processes and main judicial system projects from the last 20 years.

4. Motivations for Judicial System Modernization Processes and Main Projects

If the attention is given specifically to the judicial system modernization, even though its simpler to understand (than the Public Administration as a whole), considering the services, departments, and functions it involves, it continues to be a complex set of puzzling nodes.

From 20 or more years until now, the major motivation to justify the judicial system modernization with new projects and reforms is to eliminate or reduce Justice delays. According to Gomes [25], “The delays in justice reduce the rights’ value, affect and distort the economic activity and significantly increase justice costs, for the parties and for the State.”² [25].

The author continues to explain that Justice reforms occur mainly regarding two dimensions: if the State considers that attention should be paid to economic development, then the reforms would reflect the contracts and commercial trades. On the other hand, if the State considers that citizenship should be the focus, then access to law and Justice would be prioritized [25].

The Government programs’ analysis allowed to confirm the trends which several researches already concluded regarding the judicial system reforms since 1976 [5, 8, 20, 25, 26]. In the first 20 to 30 years after the Portuguese dictatorship, the focus was on changing procedural laws, the magistrates training and alternative means of dispute resolution (and other reforms regarding the Penal and Civil Codes, the inmates and children). In the last 20 years, the focus is on de-judicialization, informatization, the Courts organization and ways of organizing its internal work and, more recently, the way judicial services (specifically Courts) are closer and accessible to citizens.

It was in this context that the project “*Justiça + Próxima*” [“Closer Justice”] was thought, planned and developed. In this project, one can perceive what Gomes already advocated in 2011, that “themes like ethics, quality and citizenship should integrate the debate on the judiciary and influence reform processes” [25].

However, as said, the digitalization gained a particular emphasis, and it is clearly placed at the basis on any reform. The following excerpts from the interviews confirm that, but also the results retrieved from the NVivo analysis, where Information and Communication Technologies and the possession of correspondent infocommunicational competences gain a relevant role.

“Today, Portugal is recognized as one of the European countries with the greatest maturity in terms of the development of policies for Public Administration digital transformation (eGovernment). The United Nations index, which assesses the development of e-government (e-gov), released in July 2020, recognizes Portugal’s progress in

² Translation provided by the authors.

digital transformation and positions it as a technological pole in Europe. In 2019, Portugal also joined Digital 9, a group of the world's leading digital governments.” Alexandra Leitão.

“Justice has returned to a defined, clear strategy five years ago. I would say that it was in 2016, already with this Government, in the previous legislature, when we created the Closer Justice program, we effectively defined what, at the time, we considered to be the most important strategy that Justice could have for that legislature, for those four years [...]. the great modernization we made of the courts was called Tribunal + [Court +]. And so, this Court + had a very strong technological part, which allowed us to replace or, at least, create a new interface for judges in the context of CITIUS³ and, at this time, with Magistratus and the MP codex for the Public Prosecutor. But, for the citizen, we created what we call a new way of service. First attendance in the courts, physical, gaining the confidence of the main actors, those inside the Court, but also giving the citizen the possibility of making an appointment, the possibility of automatically requesting a certificate from a terminal registration and, later, to consult their own file.” Anabela Pedroso.

“Citizen's Card (CC) launching in 2007 was a milestone, as a pioneering administrative modernization project in Europe and one of the first major collaborative projects to transform the way public administration relates to citizens, bringing together justice and finance, social security, health and companies like the INCM. In all, there were 14 entities with 5 different tutelages in the government.” Alexandra Leitão.

“The availability of CITIUS, between 2008 and 2009 was an extremely important milestone in the Portuguese Justice modernization process. On the one hand, because it provided an efficient response to certain needs that the available technological means (e-mail with digital signature and MDDE - as a means of chronological validation) were not given and, on the other hand, because it opened the discussion around the tool and the innovation needs. [...] Aware of the technological and humanization issues, since 2015, the Ministry of Justice has been investing intensively in the Justice system modernization, with the introduction of new procedures and technologies and the implementation of administrative and legislative measures, to make justice closer to citizens and thus contribute to the strengthening of the democratic rule of law and the strengthening of citizenship.” Francisca Van Dunem.

Some projects stand out from the excerpts: *Justiça + Próxima, Tribunal +*, Citizen Card launching (included in the project Simplex +, which also started with Simplex), digital platforms such as CITIUS, but also SITAF (which is the analogous for the fiscal and administrative judicial processes), and the apps that are still under development, like the Magistratus or MP Codex.

The operational basis of all those projects is the technological dimension. However, the social basis is centered

in the citizen, being whether the worker or the person who looks for answers in the judicial system. And this is starting to be at the center of the discussions. The goal remains to achieve the pillars that were mentioned at the beginning of the paper: efficiency, efficacy, transparency and closeness to citizen and which are included in the 2019 report [27], but also were thought for the continuity of the program⁴.

In the next section, one will elaborate on the main challenges these projects and the judicial system modernization face, also considering the NVivo analysis and the conducted interviews.

5. Challenges Faced by the Portuguese Judicial System Modernization Processes

Changes and progress always come with challenges. To what public policies is concerned, these challenges gain a higher and complex proportion, considering all the individuals involved and the direct and indirect impacts changes can produce. Those challenges must be very well thought if one is talking about the judicial system, a public policy [28] which impacts very basic foundations of the democratic system.

NVivo results show that this was one of the subcategories most mentioned by interviewees (38 references). The relevance of this subcategory was also confirmed by the content analysis. Which led to the conclusion of some specific challenges that were pointed out and that will be explained now.

5.1. Four Years' Legislature Periods (or Less)

The first challenge to mention is the one related to the political cycles. In Portugal, the parliamentary elections happen every four years. This means that every four years (if nothing happens that demands an early election) a new Government's Program is presented and approved. Changes in party composition, leadership, and parliamentary balances contribute to relevant impacts on policy cycles.

Considering the previously mentioned challenge, from 1976 to 1987, Portugal faced some very troubled years. The first years of a democratic regime were characterized by constant governmental changes. On average, there was a new government every two years. Which resulted in political, economic and social instability, difficulties in defining and conducting a plan until the end of the legislature period and voters' lack of confidence in the Government and its program.

But, if the advantages of a four-year legislature are, among others, that it reduces the risk of vices existence and provides voters the opportunity to express their will every four years. There are some disadvantages as well: some plans and/or areas require a more extensive period for its definition and implementation. In Portugal, this is quite relevant in areas such as Education, Health and Justice.

³ Digital platform for all the parties to have access to the processes they are involved in and digitally communicate with the Court, mainly for lawyers, enforcement officers, insolvency practitioners.

⁴ <https://justica.gov.pt/>, visited on November 30th, 2021.

Specifically considering Justice and the judicial system, if a major plan must be elaborated, with new and innovative projects, to modernize and reform public policies, then, four years is a very short period if one considers the time needed for definition, testing and implementation.

Frequently, when a four-year legislature ends, with it changes the political orientation, which can influence if the following path will be of continuity or a disruptive one. And this aspect can lead to new plans, new projects, and a new set of reforms. Which, in turn, can result in delays in reforms and modernization processes.

So, four-year legislature Governments and consequent Governmental changes are the first challenge that Portuguese judicial system modernization face. And this is also quite evident in the transcripts:

“Justice has returned to a defined, clear strategy five years ago. I would say that it was in 2016, already with this Government, in the previous legislature, when we created the Closer Justice program, we effectively defined what, at the time, we considered to be the most important strategy that Justice could have for that legislature, for those four years” Anabela Pedroso.

“Well, a plan was elaborated, which lasted these four years.” José Macieira, Advisor of the Secretary of State for Justice (since 2015).

5.2. Crises

The second challenge, and this one is transversal to any Government, is moments of crisis. Portugal faced two recent crises: in 2009 and 2019 (this one is still happening). One could also mention the hard first times of the democratic regime, which developed serious political crises.

2009 and 2019 crises had serious impact on economic, political, financial, health and social dimensions [29]. And this necessarily impacts on public policies, specifically on the judicial system modernization projects development. Priorities change and economic, health and social dimensions gain relevance.

This aspect is highlighted in the discourses, but clearly mentioned by João Farinha:

“We had some capacity to invest in administrative modernization in the late 2000s, early 2010s, but then with the 2011-2015 crisis we saw a significant, abrupt drop in investment at all the levels in this modernization. And, therefore, now, fortunately, we have this possibility of injecting a good million euros into the modernization and digital transition of public administration and we hope that this is not an obstacle. We are not a rich country, the public administration is not rich, and our tax collection is also not very significant, we do not have the capacity of other public administrations to invest and, therefore, this is always limited and must always be done with a lot of discretion.” João Farinha.

5.3. Answer to EU Demands

When, in 1986, Portugal officially became part of the European Union, already knew some challenges would come

with this integration. The adaptation of different sectors, dimensions and legislation were (and still are) some of the demands. And this is an advantage, if one thinks about the financial and international support, but sometimes it can also contribute to delay some changes, since it also implies a huge amount of bureaucratic work.

The various EU institutions are constantly monitoring Portugal’s public policies, and the judicial system is no exception. In fact, judicial system is a permanent EU concern, with constant reports and evaluations being held [30, 31]. And the interviewees are aware of this.

“I would say that we support everything that we are doing in what are the regulations, which are the principles, what is the basis that the European Union has given us, because, in the judicial context, the e-Justice Action Plan, the entire strategy that we have been developing in Portugal is supported by what has been done in Europe, even in the context of European networks, of the action program of electronic justice. But also, the criminal area, the Judiciary Police it was also very linked to all the principles of the European Union and, therefore, I would say that Portugal would not be in the current stage, from the point of view of technologies in Justice, if it didn’t have this great support, which was the management and regulation part that came from Europe.” Anabela Pedroso.

“European Commission has been involved in the digitization of justice for over a decade, and the different strategic documents have been very important to establish areas for action. For example, the Commission’s Communication on the Digitization of Justice - A panoply of Opportunities, from December 2nd, 2020, set out a new approach to the digitization of justice based on a comprehensive set of financial and IT legal instruments to be used by the various stakeholders in the judicial systems, according to the needs and the most appropriate time.” Francisca Van Dunem.

“There is pressure from the European Union to modernize through funds. And the funds have very precise purposes. To receive funds does not mean receiving money to be used as you wish, it is receiving money to achieve the intended objectives. And in the matter of State modernization, the goals were indirect, that is, the European Union does not give money to the State for its modernization as an end in itself. It gives money for the State to modernize, because this is essential for the competitiveness of the economy and that is why AMA had to prove that this was essential for the competitiveness of the economy and, therefore, the administrative modernization funds were within the so-called COMPETE program.” Joaquim da Costa, Secretary of State for Administrative Modernization (from June/2011 to October/2015).

5.4. Judicial System Complexity and the Implementation of Interoperability

As already claimed, the judicial system is very complex, with several dimensions that must be considered, with several actors involved and multiple interactions between departments and functions.

If one thinks about the processing of an inventory civil process, having as its cause the death of someone, this involves the Notary, Registration, Lawyers, Court, with Judge and Public Prosecutor and all the citizens part of that process.

If the example is a domestic violence process, then the involved ones are the Criminal Police Organs, the Lawyers, the Judge and Public Prosecutor, the Court and the parts involved.

So, the interoperability is something that is intrinsic in all that is happening in one of the judicial system components, which inevitably requires the participation of another one or several others. And this gains an entirely different dimension if one refers to an international level, with the different components of the different States having to communicate with each other.

This is a challenge in itself. However, it creates other challenges: it slows the judicial system modernization pace, makes it more complex and hard to perform and evaluate in the end.

“One of the critical points, and which is not noticeable at first, is that this is a web of huge dependencies. When we move in the Judiciary Police, we are in forensic medicine too, we are in the relationship with the Public Prosecutor’s Office. When we unfurl the part of the registrations, well, then the citizens and companies become worried, because there are several things that you cannot do, simply buy a house, or sell a house or buy a car. The citizen card starts the entire process of identifying all the cards that exist in the country, therefore, is the basis and the registrations.” José Macieira.

“[...] given the complexity of the system, the modernization/innovation of Justice in Portugal has been sinuous, slow and not always realizing the full potential of the desired effectiveness.” Francisca Van Dunem.

“One of the things that is essential and that gave rise to UMIC [Agency for Knowledge Society, Public Institute], and to AMA, is the need for services and digital information and services, etc. work in coordination. Because one of the big problems of the State is the separate Ministries and General Directorates, each one with the King in his little farm and not communicating, this is one of the big problems. And, therefore, one of the great IT organization tools of the State must be sharing and working together, and many steps have been taken.” Joaquim da Costa.

“But all this quasi-collaborative work, informed between States, is also putting issues on the agenda, which are key issues for modernization, such as the need to ensure interoperability between the States’ digital service platforms, so that we can have cross-border services that feed the Single Market, like the security and privacy rules.” Maria de Fátima Fonseca, Secretary of State for Innovation and Administrative Modernization (since 2019).

5.5. Usual Practices’ Relevance

One of the most mentioned challenges was people’s attachments to traditional ways of doing things. The use of paper, the denial of ICT importance, lack of interdepartmental communication and services’ dependency, etc. There is still some resistance to abandon a few costumes,

particularly in some functions and tasks, which tends to increase bureaucracy and delay modernization.

This dimension also creates (or highlights) other challenges: data protection, cybersecurity, lack of human resources to answer all of citizen’s demands, etc.

“Modernizing is digitalizing and eliminating unnecessary bureaucracy, but there are many bureaucracies that are necessary.” Joaquim da Costa.

“We also have cultural issues. Public administration has some aversion to risk and innovation. [...] but it has natural causes, that is, the State cannot always be changing and evolving, we must have some constancy and some guarantee. But, on the other hand, we also don’t have the pressure of innovation, as companies have, which if they don’t innovate, ultimately, they die.” João Farinha.

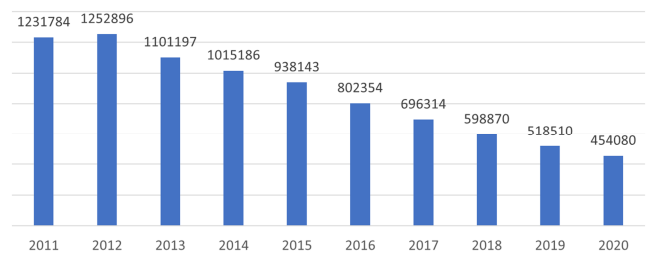
“[...] because Justice, for a few years now, has had many years at a standstill in terms of technological evolution. Therefore, I think it is perfectly normal, even cultural, because the world of Justice is typically jurists and jurists, in principle, had legislation and the Codes as their bible. And they don’t have this appetite for innovation, for the search to simplify this or simplify that.” José Macieira.

“In fact, there are specific challenges here. I’m not even going to associate it with a certain more traditional mental framework of the magistrates. There are, in fact, issues of secrecy, security, but also privacy reservation, personal data, which will create some big challenges. In addition to something that is also mentioned a lot, it is commonplace to say that the time of Justice is not the time of the media, the speed of time and the need for answers that media life or social networks have, is not the time of Justice. Because Justice is a decision of authority, it affects people’s lives, and it should be weighted and for this weighting it takes a lot of time.” Rui Batista.

5.6. Delays in Justice

For some years, the delays in Portuguese Justice is a very discussed issue [5, 8, 12, 20, 31].

For this challenge, Justice statistics may help to understand the evolution.



Source: Justice statistics⁵

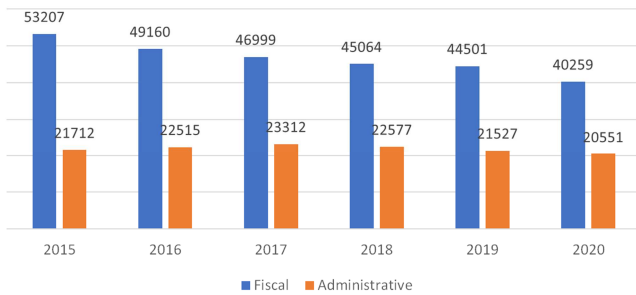
Figure 1. Pending executive processes.

This first Figure reflects the pending executive processes on 1st instance judicial courts. Between 2011 and 2020, there has been a decrease of more than 50% of the pending processes.

⁵ <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/tribunais.aspx>, visited on December 4th, 2021.

In Fiscal and Administrative Courts, the processing is not following the same trend of the judicial ones. These Courts are recent, and Judges and other workers are in fewer number, which may contribute for a certain degree of maintenance of the pending processes number.

However, as mentioned previously and claimed by some authors [25], the delays in Justice should be accompanied by other deeper discussions, such as effective access to law and Justice and transparency allied with data protection.

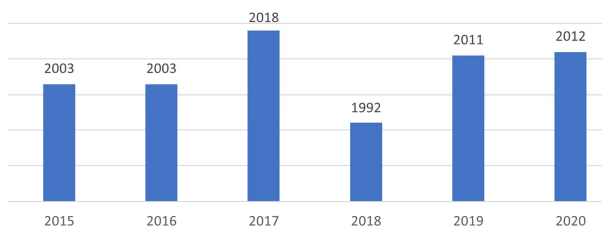


Source: Justice statistics⁶

Figure 2. Pending processes on 1st instance Fiscal and Administrative Courts.

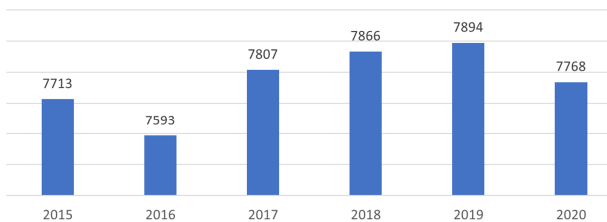
5.7. Number and Age of Judicial System Workers

The judicial system human resources have suffered a slight increase over the years. However, the lack of workers has continuously been perceived as a constraint, particularly in decision functions. This, in other hand, also promotes delays in Justice.



Source: Justice statistics⁷

Figure 3. Judicial Magistrates in Courts.



Source: Justice statistics⁸

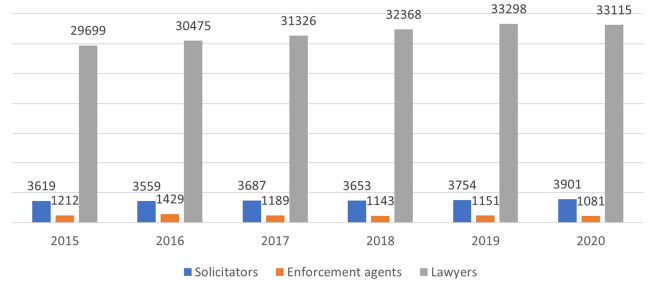
Figure 4. Other judicial workers in Courts.

⁶ <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/tribunais.aspx>, visited on December 4th, 2021.

⁷ <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/ProfissionaisJustica.aspx>, visited on December 4th, 2021.

⁸ <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/ProfissionaisJustica.aspx>, visited on December 4th, 2021.

The last three Figures show that there is some variation over the last five years regarding the number of Magistrates and other Court workers. The last Figure also reflects the innovation introduced in the processing, with new careers being created, such as the solicitors and enforcement agents. Which justify a high number of lawyers in comparison with those two other careers.



Source: Justice statistics⁹

Figure 5. Solicitors, enforcement agents and lawyers.

For the processes that are pending in Courts, there should be more Magistrates and Justice workers available. And with this comes the advanced age of some Magistrates, as José Macieira explains:

“[...] in Justice we have an average of 50 years, 52 or 53 years, on average, the age of civil servants in Justice. From the police to the courts. It's very high! I mean, when people reach these ages, they just want to do well what they know how to do and, therefore, they no longer have great patience for big changes. Which is normal. The renewal of people is, I think, the most critical point, it is the most difficult point.” José Macieira.

5.8. Difficulty in Digitalize, and Develop Infocomunicacional Competences

The last challenge can be divided in two, which is the ICT availability and the competencies for its use, which gathered 27 and 13 references, respectively, in NVivo analysis.

ICT relevance is not questionable. In fact, if there were still any doubts, the pandemic came to prove it. The question is placed at the level of how to do it, how to introduce ICT and not putting sensible data at risk? But also, the hardware update and workers' competencies to use the available tools, whether being software or hardware. The transcripts reflect all these worries.

“I think it is evidence from the Ministry of Justice, the PGR and the Superior Council of Magistracy that, without digitization, this will not work, because processes today reflect reality, reality is digital, so the process will be full of digital elements and therefore this is an investment that has yet to be made.” Rui Batista.

“Another important factor is the lack of human resources, and this has been reflected very recently, not only in the number of people, but also in the knowledge of these people.

⁹ <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/ProfissionaisJustica.aspx>, visited on December 4th, 2021.

Therefore, for example, at the level of ICT specialists, information technologies, at the moment we have few people, we have people with outdated knowledge and we have an inability to compete in terms of salaries with the private sector, for various sectors, because we have a great restriction on what can be paid and, within of these restrictions, little is paid in relation to what companies can pay, because it has not been able to keep pace with the evolution of technology.” João Farinha.

“[...] there is always the issue of the digital gap and I think it was one of the areas in which we invested the most, was to be aware of this need, to be aware of this lack of digital inclusion.” Joaquim da Costa.

6. Conclusions

From a brief characterization of the Portuguese judicial system, the authors concluded that the keyword modernization was already present in official governmental discourses before 1974. However, its effective implementation only occurred after the ending of the Portuguese dictatorship (1974). And even after this historical event happened, there were some crucial years for its effectiveness, as the year of 1986, when Portugal became a member of the EU. And there were also some critical years which contribute for the delay in its effectiveness: 2009 and 2019.

Apart from that, some projects were developed which contributed for the judicial system modernization process: the creation of a citizen card, the projects *Tribunal+* (Court +) and *Justiça + Próxima* (Closer Justice), the creation of Citizen Stores, places where the citizen can find different and several public and private services. The goal was to become closer to the citizen, whether by guarantying access to services or by become more transparent and efficient.

The paper also reflects on the modernization process taking place at the Portuguese judicial system. From this analysis, three dimensions prevailed: different modernization stages, the actors involved in it and the necessary instruments.

As for the sages, it resulted from the paper that those vary according to the year Governments are experiencing. If one is talking about a political transition year, the modernization processes can continue to follow the same path as the previous Government legislature started or it can follow a different path, taking a great amount of time to rethink modernization processes.

For these stages it also contributes the periods of crises, which can delay or leverage modernization. One of the latest examples is the 2019 health crisis, with a major impact on economy, education, justice, religion, culture, social and other societal dimensions. New demands, such as telework, and home school boost some the implementation of new tools or even contributed to the improvement of existent ones. In the judicial system this was quite relevant.

Therefore, modernization stages can manifest at different speeds. Faster or slower, if the conditions allow it or not.

Regarding the actors involved in the Portuguese judicial

system modernization processes, one may conclude that the citizen, all the field workers involved, the agents at the level of the definition processes, and the EU are all relevant. And this occurs by following a logic of interoperability.

As for the most important instruments in the modernization processes, the most mentioned were technology and infocommunicational competences. But also, the EU directives and the communication between departments and actors placed at different decision levels (interoperability). Being all relevant for the success of that modernization.

But this didn't happen without challenges, some of which remain to be surpassed. The identified ones in the interviews' analysis were: the legislature periods of four years (or less), some economic crises along the way, the urgent to answer to EU demands, the Judicial System complexity and the implementation of interoperability, the still high attachment to usual practices, the delays in Justice, the low number of Judicial workers, but also their high age and, finally, the difficulty in digitalize, and develop infocommunicational competences.

Modernization processes' challenges and, at the same time, the dimensions that promote those modernization processes contribute for the development of new projects and the definition of new and different plans. This paper reflects on that, being the beginning of a discussion at public policies' definition (namely, the judicial system) level.

Acknowledgements

The Research Project “The Two Faces of Janus in the Public Policies Modernization Process: Innovation and Tradition. The Portuguese Judicial System” is funded by FCT - Foundation for Science and Technology, under the reference 2020.07241.BD.

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CONCLUSÕES

A questão de partida da investigação a que se pretendeu dar resposta foi a seguinte: coexistirão inovação e tradição no sistema judicial português na definição e implementação de processos de modernização, previstos nos últimos 34 anos pelos Governos Constitucionais? E, considerando as respostas dadas pelos entrevistados, quer ao nível de definição dos processos de modernização, quer ao nível da sua implementação, pode afirmar-se que sim. Inovação e tradição coexistem nos projetos que vão sendo desenvolvidos ou mesmo nas políticas que se vão delineando para o sistema judicial.

Não obstante, nem todos os projetos se concluem, nem todas as políticas seguem em frente no caminho do sucesso ou até nem sempre tal acontece com eficiência e de forma breve. A integração de Portugal na União Europeia foi, sem dúvida, um propulsor para o que seriam as novas políticas do sistema judicial português, desde 1986. O processo de europeização, ou seja, a influência nas políticas, na política e nas normas (Börzel & Risse, 2007), foi sendo, paulatina e gradualmente evidente no que a Portugal diz respeito.

Assim, se em termos de pressão exercida pela transposição imediata dos regulamentos europeus, tal influência é óbvia, já não será assim quando se trata de refletir sobre as práticas laborais diárias de quem trabalha no sistema judicial ou de quem define o que serão os projetos para o próximo quadriénio (Ongaro, 2009). A influência não é óbvia, mas, de acordo com os entrevistados, acontece. Esta influência sente-se porque os processos europeus que chegam ao registo civil ou ao Ministério Público obrigam a que os colaboradores saibam como se trata um processo dessa natureza. Ou porque o financiamento atribuído para o desenvolvimento de projetos para a modernização do sistema judicial obriga a que estes tenham um enfoque determinado, como resolver o problema dos atrasos da Justiça ou garantir a proximidade desta com os cidadãos e as empresas.

Os objetivos gerais da investigação de doutoramento foram:

- O1. Analisar as estratégias de reforma das políticas públicas portuguesas e comparar com a sua implementação, nos últimos 34 anos.
- O2. Compreender o processo de modernização das políticas públicas em Portugal, considerando os critérios de análise definidos por Martinelli.
- O3. Compreender o processo de modernização do sistema judicial português nos últimos 34 anos.

Estes objetivos foram seguidos e cumpridos. Foi possível, ao longo dos últimos dois anos, analisar as estratégias seguidas na definição dos projetos de modernização do sistema judicial, nos últimos 34 anos, quer por via da análise aplicada aos Programas do Governo desde 1976 e até 2019, análise essa que teve como orientação os critérios de Pedroso, Trincão e Dias (2003) e de Martinelli (2005), quer por via das entrevistas semiestruturadas aplicadas aos decisores e atores na implementação desses projetos.

Assim, relativamente ao primeiro objetivo geral, o artigo intitulado *The path to public policies' reform definition. The case of the Portuguese judicial system* apresenta como resultado a análise documental aplicada aos Programas do Governo de 1976 a 2019. Esta análise, complementada com

a realização de entrevistas aos decisores de Políticas Públicas permitiu concluir que, pese embora várias medidas de modernização sejam pensadas e se vejam refletidas nos documentos, nem sempre se concretizam originando a que muitas dessas medidas vão mesmo sendo incluídas em cada um dos sucessivos Programas do Governo.

Foi possível, ainda, através da análise documental, com recurso aos critérios de Martinelli (2005), compreender o processo de modernização das políticas públicas em Portugal (O2), especificamente, o direcionado ao sistema judicial, análise essa presente no artigo suprarreferido. Assim, são critérios de Martinelli os seguintes: Unidade de análise; Características da sociedade; Fatores/Mecanismos/Processos; Direção da Modernização; Sequência; Ocorrências previstas e intencionais; Ocorrências imprevistas e não intencionais; Duração; Consequências e Resultados. Todos os Programas do Governo foram, então, analisados considerando estas dimensões. Concluiu-se por uma presença constante (que passou a exigência da UE a partir de 1986, sobretudo) do fator modernização, quer sendo esta aplicada aos procedimentos, quer pelo recurso a meios informáticos.

Assim, foi possível compreender o processo de modernização do sistema judicial português nos últimos 34 anos (O3). Mais ainda, no artigo *Modernization spheres of the Portuguese judicial System* (Anexo 6), foi possível concluir pela existência de esferas concretas de modernização do sistema judicial português, ou seja, áreas específicas em que os atores do sistema judicial evidenciam a presença de fatores de modernização ou que contribuem para que o processo ocorra. São eles os atores, a UE, alguns momentos-chave, como a criação de plataformas informáticas (CITIUS e SITAF, por exemplo) para comunicação entre tribunais e cidadãos e empresas, a relevância da avaliação de impacto, das Tecnologias de Informação e Comunicação e das competências infocomunicacionais.

Em termos de objetivos específicos da investigação, foram definidos os seguintes:

Oa. Analisar a forma como se conciliam inovação e tradição e o papel de uma e outra na implementação de processos de modernização do sistema judicial.

Ob. Compreender o papel dos atores-chave do sistema judicial português no processo de modernização.

A conclusão pelo cumprimento destes dois objetivos específicos pode ser retirada, sobretudo, pelo artigo intitulado *The two faces of Janus of the Portuguese Judicial System implementation: tradition and modernization*. Assim, e recorrendo a Lopes (2021), conclui-se que

Regras, especificações, hierarquias, distinções e documentações têm de ser cumpridas por quem quer que esteja em funções. Sucede que a passagem à prática da ordem ostensiva torna visível uma dimensão complementar, denominada pelos mesmos autores de performativa, a qual procura reproduzir e respeitar preceitos ostensivos, embora o faça de modos muitíssimo variados, vindo-se por vezes obrigada a resolver criativamente algumas contradições preceituais. (Lopes, 2021, p. 72).

O artigo referido evidencia como resultado um modelo ideal definido pelos atores do sistema judicial, com particular ênfase na especialização para os diferentes ramos de trabalho e na formação

dos atores em áreas como a utilização de Tecnologias de Informação e Comunicação e respetivas competências infocomunicacionais, ambos como forma de se conseguir alcançar a conciliação entre tradição e modernização, tornando o sistema judicial mais eficiente.

Na análise documental aos Programas do Governo, o que se verificou foi uma constante preocupação na modernização do sistema judicial, quer através da inovação legislativa, da sua flexibilização ou restrição, pela introdução de novas especialidades e formação de recursos humanos, pela preocupação constante em promover a interoperabilidade entre estruturas ou, mais recentemente, pela introdução de Tecnologias de Informação e Comunicação e por chavões como digitalização ou informatização do sistema judicial.

Ou seja, foi possível compreender a modernização do sistema judicial português ao nível dos processos e procedimentos; das relações entre atores; da aprendizagem contínua e agilização; da organização dos serviços; da comunicação interna e externa, entre outras. O âmbito de atuação é tão lato, os problemas a que tenta dar resposta são de tal modo complexos, que se defende que o sistema judicial é, em si mesmo, uma política pública, isto é, definido como um conjunto intrincado de (não) decisões políticas (Mincato, 2012), que pretende resolver os problemas que lhes são apresentados pelos cidadãos e pelas empresas, com impacto para toda a sociedade (e até a nível europeu) (Secchi, 2011), resultado das escolhas entre o que fazer e quando (Baptista, Pocinho, & Nechita, 2019).

Foi, por isso, relevante para a análise do sistema judicial enquanto política pública a aplicação de uma abordagem tridimensional, que inclui o modelo institucionalista, pela proximidade entre a política pública e as instituições governamentais. Paradigmático deste modelo é, precisamente, a pressão europeia anteriormente referida. Inclui também o modelo de processo, pela forma como são elaborados os projetos e definidas as políticas, seguindo orientações superiores de modelos de apresentação, de agenda, de organização e avaliação. Por último, o modelo incremental, porque se pretendia verificar (o que acabou por acontecer, sobretudo na análise documental) a presença de uma continuidade entre o Programa do Governo anterior e o seguinte, não se excluindo tudo o que se tinha construído, mas antes acrescentando o que traria mais valor (Dye, 2009).

Como referido, o sistema judicial é complexo.

Então, como aplicar as linhas orientadoras da Nova Gestão Pública ao sistema judicial português? Ou seja, como promover que público e privado se imiscuem (o que já acontece com a possibilidade conferida de existência de Conservatórias privadas), que as estruturas decisórias e hierárquicas do sistema judicial sejam mais flexíveis, que se descentalizem essas estruturas e se incentive ao empreendedorismo (Gray & Jenkins, 1995)?

Assim, uma das formas foi, precisamente, através da introdução de Tecnologias de Informação e Comunicação (Ongaro, 2009). Se estas não são a panaceia para todos os males, em muito contribuem para a agilização de procedimentos, para a eliminação de tarefas rotineiras e monótonas, para promover a proximidade com o cidadão e as empresas e a transparência. E também as estruturas têm sofrido grandes alterações, com a especialização dos tribunais e a sua reorganização

(sobretudo, a partir de 2013) e com o incentivo interno ao empreendedorismo (resultado concreto foi o desenvolvimento pelos Oficiais de Justiça da plataforma informática de apoio à gestão de processos judiciais, *Habilus*, que, entretanto, se transformou em CITIUS e se alargou à plataforma de intercâmbio entre tribunais e cidadão). O que Fonseca e Carapeto (2009) designam como sendo a conjugação da Nova Gestão Pública com a corrente participativa.

O presente estudo revestiu especial complexidade pelo caráter holístico que assumiu ao pretender analisar o sistema judicial em toda a sua amplitude. Para além de séculos de história, compõem o sistema judicial português os Registos e Notariado, a Solicitadoria, os Tribunais, a Administração Judicial, as forças policiais e a Resolução Alternativa de Litígios. Ou seja, uma teia intrincada de atores-chave, cada um com os seus interesses e com as suas funções, e de departamentos, cada qual com os seus objetivos e missões, todos tentando influenciar a política e as políticas (Tude, Ferro e Santana, 2010).

Não obstante, para que essa análise se realizasse em muito contribuíram as entrevistas semiestruturadas conduzidas. A partir delas foi possível perceber que desafios enfrenta hoje o sistema judicial e a que níveis (a par com o desafio constante da crise da justiça). Deste modo, para os definidores dos projetos de modernização do sistema judicial, os desafios são, maioritariamente, oito:

- Os períodos curtos das legislaturas, para os quais é difícil definir projetos de longa duração ou, quando se fazem, correr o risco de não os acompanhar até ao fim ou de os ver ser interrompidos;

- As constantes crises com que o país se depara (crises mundiais ou europeias, com necessária implicação nacional), que complicam a definição de projetos mais ambiciosos;

- A resposta às exigências da UE, que, pese embora seja uma instituição que contribui para que muitos projetos se desenvolvam e que muita inovação seja produzida, está frequentemente a exigir relatórios e avaliações, que retardam o que poderia estar a ser uma nova definição de projetos;

- A complexidade do sistema judicial, já discutida, e a implementação da interoperabilidade. Num modelo ideal, todas as estruturas que compõem o sistema comunicariam entre si e partilhariam informação. Mas tal ainda não acontece;

- A relevância dos costumes. E aqui tem especial relevância a tradição e a forma como os usos e os costumes ainda assumem um papel preponderante em algumas esferas do sistema judicial, por exemplo, as práticas e as decisões judiciais;

- Os atrasos da justiça, também estes identificados por Pedroso, Trincão e Dias (2003) aquando da sugestão dos indicadores da crise da justiça;

- O número, a idade e a desmotivação dos colaboradores do sistema judicial, quer porque são poucos os recursos humanos disponíveis, quer porque já não têm motivação para introduzir no seu dia-a-dia laboral novas práticas que incluam, por exemplo, a utilização de Tecnologias de Informação e Comunicação;

- Finalmente, e muito relacionado com o anterior, a dificuldade em digitalizar o sistema judicial e, em consequência, em desenvolver competências infocomunicacionais (podendo só este aspeto ser traduzido num projeto de investigação em específico).

No que diz respeito aos atores dos projetos de modernização do sistema judicial, os desafios são, em grande medida, cinco:

- As próprias reformas/mudanças, que, muitas vezes, não estão sequer adaptadas à realidade do terreno, e que obrigam à aprendizagem de novas práticas, atrasando, ainda mais, a resposta às urgências do quotidiano;

- As pessoas, que são, maioritariamente, consideradas como o motor das mudanças e da modernização do sistema judicial, mas são também elas o maior entrave a que as reformas ocorram, não promovendo práticas que facilitem o trabalho diário;

- A integração na UE e a sua necessária influência. Mais uma vez, porque nem sempre as exigências da UE se ajustam ao que são as idiossincrasias do país e do sistema judicial português. Mas, igualmente, porque, a excessiva regulamentação europeia resulta na também excessiva criação legislativa nacional, trazendo uma carga de trabalho (e aprendizagem) elevada e uma incerteza jurídica para o cidadão e as empresas;

- As avaliações de impacto que, embora sejam consideradas relevantes, acrescem também ao trabalho realizado e nem sempre são perspectivadas como efetivas avaliações de impacto, mas mais como a imagem que se quer criar de cada um dos departamentos;

- As Tecnologias de Informação e Comunicação e as competências infocomunicacionais, ou seja, se, de um modo geral, até vão sendo perspectivadas como benéficas para o desenvolvimento do trabalho quotidiano, nem sempre a sua introdução vem acompanhada da devida formação, o que cria entraves e desafios maiores do que potencialidades.

Posto isto, se a juridificação e a judicialização do sistema judicial português têm sido os novos chavões do sistema judicial, sobretudo, pelo aumento do número de processos litigiosos, a par com a desjudicialização e a informalização, pela introdução de novas formas de resolução de litígios e pela procura de uma maior proximidade ao cidadão (Pedroso et al., 2003), ainda há um caminho longo a percorrer se o que se pretende é modernizar e inovar num meio tão complexo e que tem repercussões a tantos níveis.

Neste percurso, o objetivo não deverá ser eliminar o passado e começar com tábua rasa. Bem pelo contrário, a modernização deverá incluir as aprendizagens e as mais-valias dos procedimentos tradicionais e enriquecer-se a partir destes (Martinelli, 2005). Aliás, se se tiver em consideração as dimensões que, para Martinelli (2005) e Smith (2003), estão presentes nos processos de modernização, compreende-se que todas elas, de modo mais ou menos frequente e vincado ou assumindo até outra forma, se encontram na definição de processos de modernização do sistema judicial português (para esta análise, será relevante a leitura das tabelas 2 e 3 do artigo 3). São elas: a ciência e a tecnologia; a industrialização; a interdependência entre Estados; a especialização; a mobilidade social; o desenvolvimento político; a secularização; a existência de novos valores; o

aumento dos meios urbanos; a privatização da vida familiar; a democratização da educação e de uma cultura de massas; o desenvolvimento de meios de comunicação e a, conseqüente, compressão do tempo e do espaço.

No fundo, as mudanças sociais são os grandes motores da inovação do e no sistema judicial. Este, como se viu, é um conjunto intrincado de atores, que se movimentam nas esferas da sociedade que, por isso, requerem respostas do sistema judicial para o que são as dificuldades e os problemas com que se deparam. Por esse motivo, o sistema judicial deverá assumir um caráter evolutivo e adaptativo (características da modernização), mas, em simultâneo, deverá ser garante de certeza e segurança, de estabilidade e equilíbrio (Smith, 2003).

O que, no contexto português, como é aquele em que se desenvolve a tese de doutoramento, e tendo em consideração as características do sistema político-administrativo, conforme analisado por Edoardo Ongaro (2009), nem sempre aqueles novos chavões associados ao sistema judicial ou mesmo processos de modernização que se pretendem concretizar são facilitados pela presença dessas características. Aliás, no entender do autor, a eficiência, transparência, proximidade e inovação podem encontrar-se minadas, uma vez que ainda se verifica um desequilíbrio com favorecimento de valores mais tradicionais no sistema judicial.

E, talvez por estarem conscientes deste desequilíbrio, as políticas definidas nos Programas do Governo ao longo dos anos têm tido, sobretudo, um caráter incremental, combinam projetos mais inovadores (*Tribunal+*), com outros que asseguram a continuidade das práticas (o portal *Justiça.gov.pt* – Plataforma Digital da Justiça), com a atenção dada aos funcionários judiciais e ao seu envolvimento no desenvolvimento desses projetos.

Por todos os resultados alcançados ao longo da investigação, que culminam com a apresentação da tese, considera-se ter contribuído de forma bastante positiva para a evolução da compreensão da área científica das Políticas Públicas, em Portugal. De igual modo que se considera ter contribuído para a área científica das Ciências da Comunicação e da sua relevância na articulação com as Políticas Públicas, numa lógica interdisciplinar.

A publicação do artigo científico intitulado “*Sistema judicial português como política pública. Motivos e fundamentações*” foi um ponto de partida crucial, quer para o desenvolvimento da tese, quer para a contribuição científica. Assumiu-se uma perspetiva inovadora, que se defendeu e que foi aceite pelos pares.

Aquele artigo e esta investigação foram bastante ambiciosos, sobretudo, como foi possível analisar ao longo destas últimas linhas, pela complexidade do sistema judicial, pelas estruturas que o compõem, pela quantidade de projetos que estão, atualmente, a ser desenvolvidos, mas também que o foram ao longo dos últimos 34 anos. Não obstante, considera-se, mesmo assim, ter cumprido os objetivos definidos no início e contribuir para o aprofundar dessa realidade.

Para tal, revestiu grande importância a metodologia adotada, a combinação entre análise documental e duas fases de entrevistas, com atores localizados a dois níveis diferentes das políticas

públicas: a definição e a implementação. Esta abordagem proporcionou um entendimento original do sistema judicial português, muito completo e crítico.

Embora se considere que o trabalho foi concluído de forma criteriosa e diligente, nem sempre decorreu sem sobressaltos. Em termos de principais dificuldades sentidas, embora não seja propriamente novo, de referir que o projeto de investigação começou a ser desenvolvido em fase pré-pandemia, teve continuidade durante a mesma e a defesa decorreu já em confinamento. Ou seja, houve muitas contingências que não foi possível ponderar, pelo desconhecido que era toda a situação. Ainda assim, sem dúvida que as dificuldades apresentadas foram totalmente ultrapassadas.

No que diz respeito à análise documental, ainda que esse fosse um objetivo que estava contido desde o início no projeto de tese, não se imaginava a quantidade de produção governamental e europeia com que se iria deparar. Escolher os documentos e as perspetivas foi, por isso, uma dificuldade.

Em relação às entrevistas conduzidas com os definidores dos projetos de modernização do sistema judicial, embora esta fase não estivesse sequer prevista no projeto de tese, rapidamente se percebeu que traria uma enorme mais-valia à investigação, pelo que se decidiu incluir. No entanto, quando essa decisão foi tomada, também se previu que atores-chave de Governos anteriores estivessem disponíveis para responder às questões, o que não veio a suceder. Esta foi uma dificuldade que não se ultrapassou. Ou seja, embora esteja contida na investigação uma entrevista a um ator-chave que exerceu funções em anterior Governo, tal não pode ser considerado como representativo, embora se perceba a relevância da sua contribuição para a tese.

Ademais, pelos cargos ocupados e pelo momento que o país atravessava (estas entrevistas foram realizadas entre março e abril de 2021, correspondente ao segundo confinamento), agendar as conversas não se fez sem percalços e sem alguns atrasos.

Já no que diz respeito à segunda fase de entrevistas, a implementadores dos projetos de modernização do sistema judicial, a principal dificuldade foi mesmo encontrar pessoas disponíveis para responder às perguntas.

Como trabalho futuro de investigação, considera-se que seria uma enorme mais-valia ouvir os cidadãos e as empresas no que aos projetos de modernização do sistema judicial diz respeito, bem como ao impacto que tiveram nas suas vidas.

Considerando a amplitude e complexidade do sistema judicial, sugere-se, ainda, que se individualizem as dimensões mais relevantes, quer sejam atores-chave, projetos, estruturas ou até desafios, e se investiguem e compreendam de modo mais aprofundado.

Não obstante, a realização deste estudo assumindo uma perspetiva a 10 anos seria uma mais-valia, perceber o que mudou, que novos projetos foram desenvolvidos, que novos atores e novas estruturas surgem e que impacto têm tecnologias como Inteligência Artificial no sistema judicial.

A evolução do passado para o futuro é o que representa a investigação que se debruçou sobre o que foram (e são) os principais processos de modernização do sistema judicial português, entre

1976 e 2019. O mais enriquecedor foi a compreensão do contributo do passado nas práticas do presente e do futuro e como, às vezes forçados por contingências incontroláveis, como uma pandemia, se inicia o processo de mudança, introduzindo inovação nos processos. De resto, e porque se considera atual e aplicável, termina-se com a reiteração do que já vinha defendendo Boaventura de Sousa Santos, em 2005, relativamente à crise da Justiça que se vivia na altura, devendo esta ser a “alavanca para a elaboração de um contrato social da justiça que garanta a concretização de uma agenda estratégica de reforma”. Entre outras linhas desse contrato, defende o autor que “As reformas devem ser introduzidas a título experimental e, uma vez avaliadas, tornadas definitivas.”¹

¹ Santos, B. de S. (2005, 13 de outubro). E se a justiça fosse parte da solução? *Visão*, 154.

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ANEXOS

ANEXO 1

CONSENTIMIENTO INFORMADO DECISORES DE POLÍTICAS PÚBLICAS

Consentimento informado para participação em investigação

As duas faces de Janus da modernização das políticas públicas: inovação e tradição

O caso do sistema judicial português

O trabalho de investigação “As duas faces de Janus da modernização das políticas públicas: inovação e tradição. O caso do sistema judicial português” está a ser desenvolvido no âmbito do Doutoramento em Políticas Públicas, a realizar na Unidade de Investigação em Governança, Competitividade e Políticas Públicas (GOVCOPP) e *DigiMedia – Digital Media & Interaction Research Centre*, ambas da Universidade de Aveiro, sob a orientação do Prof. Doutor Filipe Teles e da Prof. Doutora Lídia Oliveira.

O projeto visa analisar e compreender o papel da inovação e da tradição no processo de modernização do sistema judicial português. Pretende contribuir-se para o aprofundamento do conhecimento das temáticas, sendo prioritário e de suma importância, para tal, incluir no estudo entrevistas a decisores políticos, agentes interventores na definição de políticas públicas.

Este projeto foi aprovado pela Universidade de Aveiro, estando em conformidade com diretrizes e princípios éticos, nacionais e internacionais, entre os quais se inclui o quadro geral de proteção de dados consignado no Regulamento EU 2016/679 (RGPD). Esta investigação respeita a privacidade dos entrevistados, cujo consentimento prévio é solicitado, garantindo a segurança das informações prestadas. Os dados recolhidos através da entrevista destinam-se, única e exclusivamente, para fins académicos e não serão partilhados com quaisquer entidades terceiras.

Os resultados da investigação serão apresentados na Universidade de Aveiro, em 2022, podendo, se desejar, contactar a autora para deles ter conhecimento.

A sua colaboração neste estudo é voluntária e pode retirar-se a qualquer altura ou recusar participar, sem que tal facto tenha quaisquer consequências. Se aceitar participar, muito agradecemos a colaboração.

Declaro que consinto na utilização dos dados das minhas respostas para o tratamento do seu conteúdo com vista ao estudo académico “As duas faces de Janus da modernização das políticas públicas: inovação e tradição. O caso do sistema judicial português”.

Data: ___/___/___

Assinatura: _____

ANEXO 2

GUIÃO DE ENTREVISTA DECISORES DE POLÍTICAS PÚBLICAS

GUIÃO DE ENTREVISTA A DECISORES / DEFINIDORES DE POLÍTICAS PÚBLICAS

A referida entrevista enquadra-se no âmbito do trabalho de investigação doutoral intitulado "*As duas faces de Janus da modernização das políticas públicas: inovação e tradição. O caso do sistema judicial português*", a realizar na Unidade de Investigação em Governança, Competitividade e Políticas Públicas (GOVCOPP) e *DigiMedia – Digital Media & Interaction Research Centre*, ambas da Universidade de Aveiro, sob a orientação do Prof. Doutor Filipe Teles e da Prof. Doutora Lídia Oliveira. A entrevista visa recolher a opinião de decisores políticos sobre a modernização do sistema judicial português.

Caso pretenda obter mais informações sobre a investigação em curso poderá entrar em contacto através do correio eletrónico anamelro@ua.pt ou do telemóvel 968 653 335.

O projeto é financiado pela Fundação para a Ciência e Tecnologia, sob a referência 2020.07241.BD.

Os dados recolhidos através desta entrevista destinam-se única e exclusivamente a fins académicos e não serão partilhados com quaisquer entidades terceiras.

Caso deseje receber os artigos publicados no âmbito da presente investigação, por favor, indique o correio eletrónico para o qual deverão ser remetidos.

Muito se agradece a colaboração na resposta à entrevista, sendo um valioso contributo na prossecução deste trabalho académico, mas, sobretudo, para a contínua construção da ciência em Portugal!

1. Como caracterizaria a modernização e inovação do sistema judicial português nas últimas décadas? Qual tem sido a estratégia prosseguida? (mais dinâmica, mais lenta, porque fases passou, quais os pontos-chave, mais política, mais pragmática, etc.)
 - a) Para além dos instrumentos de cariz normativo-legal, que outros instrumentos diria que são essenciais para o processo de modernização do sistema judicial português (procedimental (plataformas, formação, etc.)?)
2. Que momentos destacaria, nos últimos anos, na modernização do sistema judicial português?
3. Quais são/foram os atores-chave na definição e, posteriormente, na implementação de processos e procedimentos de modernização e de inovação do sistema judicial português? Quem mais participa/participou nessa tomada de decisão e definição?
4. Que motivações foram surgindo para a introdução de reformas no sistema judicial?
 - a. Em algum momento específico destacaria a relevância da União Europeia nesse processo?
5. Quais os maiores desafios/entraves/resistências que se colocaram/têm colocado à modernização e implementação de processos inovadores no sistema judicial?
6. Como se ultrapassaram ou prevê ultrapassar esses desafios? E em que horizonte temporal?
7. Na definição de processos de modernização do sistema judicial, foram atendidas as realidades locais? De que modo? Ou porque motivo não foram?
 - a. Foram ouvidos os interessados ao nível local?
 - b. Quem são/eram considerados os interessados?
 - c. Como se processa/processou esse período de audiência?
8. Como se conciliam a tradição e a modernização no sistema judicial português?
9. Qual o papel atribuído aos sistemas de informação e comunicação (plataformas digitais, recursos digitais específicos, como a Internet das Coisas, tecnologia digital como um todo) na fase de definição das políticas/dos programas para o sistema judicial?
10. Em que medida considera que a detenção de competências infocomunicacionais¹ por parte dos agentes no campo da definição de políticas públicas é relevante para a adoção de práticas de modernização?
11. De que modo (se tal acontecia), estavam já as questões da modernização, inovação e transição digital e reflexão sobre políticas públicas presentes no seu percurso profissional?
12. Ao nível da definição de políticas públicas e da modernização do sistema judicial português, há algum contacto que considere ser uma mais-valia para realização de entrevista?

¹ Competência infocomunicacional definida como a capacidade/habilidade para a procura e recolha de informação e/ou estabelecimento de relações sociais em meio digital (definição apresentada por Borges, J., & Oliveira, L. (2011). Competências infocomunicacionais em ambientes digitais. *Observatorio (OBS*)*, 5(4), 291-326., disponível em <http://obs.obercom.pt/index.php/obs/article/view/508/460>).

ANEXO 3

CONSENTIMENTO INFORMADO ATORES DO SISTEMA JUDICIAL

Consentimento informado para participação em investigação

As duas faces de Janus da modernização das políticas públicas: inovação e tradição

O caso do sistema judicial português

O trabalho de investigação “As duas faces de Janus da modernização das políticas públicas: inovação e tradição. O caso do sistema judicial português” está a ser desenvolvido no âmbito do Doutoramento em Políticas Públicas, a realizar na Unidade de Investigação em Governança, Competitividade e Políticas Públicas (GOVCOPP) e *DigiMedia – Digital Media & Interaction Research Centre*, ambas da Universidade de Aveiro, sob a orientação do Prof. Doutor Filipe Teles e da Prof. Doutora Lídia Oliveira.

O projeto visa analisar e compreender o papel da inovação e da tradição no processo de modernização do sistema judicial português. Pretende contribuir-se para o aprofundamento do conhecimento das temáticas, sendo prioritário e de suma importância, para tal, incluir no estudo entrevistas a agentes interventores na implementação de políticas públicas.

Este projeto foi aprovado pela Universidade de Aveiro, estando em conformidade com diretrizes e princípios éticos, nacionais e internacionais, entre os quais se inclui o quadro geral de proteção de dados consignado no Regulamento EU 2016/679 (RGPD). Esta investigação respeita a privacidade dos entrevistados, cujo consentimento prévio é solicitado, garantindo a segurança das informações prestadas. Os dados recolhidos através da entrevista destinam-se, única e exclusivamente, para fins académicos e não serão partilhados com quaisquer entidades terceiras. As entrevistas deverão ser gravadas para permitir uma melhor compreensão dos factos e facilitar o seu tratamento.

Os resultados da investigação serão apresentados na Universidade de Aveiro, em 2022, podendo, se desejar, contactar a autora para deles ter conhecimento.

A sua colaboração neste estudo é voluntária e pode retirar-se a qualquer altura ou recusar participar, sem que tal facto tenha quaisquer consequências. Se aceitar participar, muito agradecemos a colaboração.

Declaro que consinto na utilização dos dados das minhas respostas para o tratamento do seu conteúdo com vista ao estudo académico “As duas faces de Janus da modernização das políticas públicas: inovação e tradição. O caso do sistema judicial português”.

Data: ___/___/___

Assinatura: _____

ANEXO 4

GUIÃO DE ENTREVISTA ATORES DO SISTEMA JUDICIAL

GUIÃO DE ENTREVISTA A ATORES-CHAVE DO SISTEMA JUDICIAL PORTUGUÊS

O presente guião de entrevista enquadra-se no âmbito do trabalho de investigação doutoral intitulado *“As duas faces de Janus da modernização das políticas públicas: inovação e tradição. O caso do sistema judicial português”*, a realizar na Unidade de Investigação em Governança, Competitividade e Políticas Públicas (GOVCOPP) e *DigiMedia – Digital Media & Interaction Research Centre*, ambas da Universidade de Aveiro, sob a orientação do Prof. Doutor Filipe Teles e da Prof. Doutora Lídia Oliveira. A entrevista visa recolher a opinião de atores-chave que se situam ao nível do funcionamento do sistema judicial sobre a modernização, a transição digital e a influência da União Europeia na implementação de processos e procedimentos.

Caso pretenda obter mais informações sobre a investigação em curso poderá entrar em contacto através do correio eletrónico anamelro@ua.pt ou do telemóvel 968 653 335.

O projeto é financiado pela Fundação para a Ciência e Tecnologia, sob a referência 2020.07241.BD.

Os dados recolhidos através desta entrevista destinam-se única e exclusivamente a fins académicos e não serão partilhados com quaisquer entidades terceiras.

Muito se agradece a colaboração na resposta à entrevista, sendo um valioso contributo na prossecução deste trabalho académico, mas, sobretudo, para a contínua construção da ciência em Portugal!

1. Que mudanças considera terem ocorrido nos últimos anos ao nível do desempenho da sua função (introdução de ferramentas, plataformas e aplicações informáticas, de alterações legais, de imposições europeias, organização territorial, entre outras)?
 - 1.1. Na sua opinião, os sistemas de informação e comunicação tiveram algum impacto no desempenho da sua função?
 - 1.2. Que papel atribui à detenção de competências infocomunicacionais¹ por parte dos agentes na adoção de práticas de modernização?
2. Como perceciona as mudanças? Considera-as benéficas ou prejudiciais para o desempenho das suas funções?
3. Que momentos destacaria, nos últimos anos, na modernização do sistema judicial português?
 - 3.1. Sente que, de alguma forma, há uma forte influência da UE nos processos de modernização?
4. Quais considera que são os atores-chave nesses processos e procedimentos de modernização e de inovação do sistema judicial português?
5. Considera que os principais atores localizados no território são ouvidos na definição de processos de modernização do sistema judicial português?
6. A nível central, de que modo considera que são ponderados os impactos locais originados pela modernização do sistema judicial?
7. Quais considera que têm sido os principais elementos facilitadores e entraves presentes na modernização e implementação de processos inovadores no sistema judicial?
 - 7.1. Como se têm ultrapassado os maiores entraves desses processos?
8. Na sua opinião, no sistema judicial português a tradição e a modernização têm estado conciliadas ou em tensão?
 - 8.1. E qual o modelo ideal de conciliação destas duas faces?

Função desempenhada _____

Anos no desempenho da função _____

Outras funções desempenhadas no sistema judicial _____

Ao nível da implementação de processos de modernização do sistema judicial português, há algum contacto que considera seria uma mais-valia para realização de entrevista

1. _____
2. _____
3. _____
4. _____
5. _____

Caso deseje receber os artigos publicados no âmbito da presente investigação, por favor, indique o correio eletrónico para o qual deverão ser remetidos _____

¹ Competência infocomunicacional definida como a capacidade/habilidade para a procura e recolha de informação e/ou estabelecimento de relações sociais em meio digital (definição apresentada por Borges, J., & Oliveira, L (2011). Competências infocomunicacionais em ambientes digitais. *Observatorio (OBS*)*, 5(4), 291-326., disponível em <http://obs.obercom.pt/index.php/obs/article/view/508/460>).

ANEXO 5

ARTIGO 5

Melro, A., Oliveira, L. & Teles, F. Challenges posed to the Portuguese judicial system modernization. (Aguarda decisão editorial).

Challenges posed to the Portuguese judicial system modernization¹

Abstract

The paper focuses on perceptions that agents, workers in the Portuguese judicial system, in all their functions, have regarding the challenges that are posed to them when implementing modernization processes. Which, then, allows the authors to identify and understand the challenges and how the agents address them. The paper presents the results achieved with NVivo analysis applied to eight interviews. Those interviews were also analyzed considering their content, following Bardin's guidelines (Bardin, Reto, & Pinheiro, 1977), with some excerpts being selected to enhance the conclusions. The interviewed agents are placed in different working positions in the judicial system (Public Prosecutors, Lawyers, Notaries, Judiciary Police Agents, among others). They are systematically confronted with the need to implement reform measures. There were several challenges mentioned. However, a common aspect among those challenges is the existent gap between the judicial system projects' definition and their degree of achievement in the field. The paper contributes to the theoretical discussion with topics such as the symbiosis of traditional and modern practices, focusing on qualitative data and considering the more significant and inevitable EU influence.

Keywords

Portuguese judicial system; modernization; reforms; innovation processes; judicial system projects; NVivo analysis; content analysis.

Introduction

In Public Policies, there is a standard gap between what is defined in terms of modernization processes and what is achieved, what is idealized, and then effectively accomplished (Hudson, Hunter, & Peckham, 2019; Rosli & Rossi, 2014). Analyzing this is the work of public policy evaluation impact processes (Batista & Domingos, 2017), which allows policy-makers to understand the path followed, its impacts, and what needs to be changed.

The main goal of the paper is to identify and understand the challenges judicial system workers face when asked to implement modernization processes. For that, the authors start by presenting a list of the main defined projects applied for the judicial system modernization. And, secondly, by analyzing the content of the interviews conducted.

As Sabatier & Mazmanian (1980) claimed,

Implementation is the carrying out of a basic policy decision, usually made in a statute (although also possible through important executive orders or court decisions). Ideally, that decision identifies the

¹ Melro, A., Oliveira, L. & Teles, F. Challenges posed to the Portuguese judicial system modernization. Artigo submetido em abril de 2022. Aguarda decisão editorial.

problem(s) to be addressed, stipulates the objective(s) to be pursued, and, in a variety of ways, "structures" the implementation process. (Sabatier & Mazmanian, 1980, p. 540).

The paper is divided into four sections. The first one presents a brief theoretical framework considering what is in discussion: the challenges most mentioned by the interviewees when implementing modernization processes. This section included the search by the modernization, reforms, innovation processes, and judicial system projects keywords. Similar European realities were analyzed, and other studies were compared.

The following section is dedicated to methodology explanation, followed by section three, which lists and describes some of the main projects implemented in the Portuguese judicial system in the last 48 years, with particular emphasis on the last 20 years. This last period is justified by the rapid evolution of Information and Communication Technologies, which occurred in Portugal and enabled modernization. The pandemic also contributed to this modernization.

Section four will be dedicated to analyzing the challenges accompanying the modernization processes and the projects implemented. Those challenges are reflections and reflect the daily work demands, which provide actors a space to be creative (for example, the CITIUS platform, which will be described in detail in section one). It also offers blockages hard to overcome, which is not ideal in such a sensible area (the judicial system).

This last section will also be grounded in the interviews' excerpts, which are essential for understanding the projects' relevance for the actors responsible for making them operate in the field.

As previously mentioned, the paper results from a three-way strategy methodological research project. Furthermore, because of that, it can be perceived as one of its highlights.

1. Theoretical framework

Contrary to what Salazar (2021) defends, this article considers breaking with the past in the judicial system impossible. In fact, for several years now, the judiciary has also been going through a crisis, manifested through successive delays in dispute resolution or even in processes conclusion in any other service linked to the judicial system (Gomes, 2011). This crisis has given rise to the elaboration of efficiency plans closely related to the New Public Management applied to the Public Administration as a whole (Tavares, 2019; Teles, 2020). This has resulted in projects that continually demand to dynamize, modernize, innovate, and make the judicial system more flexible (Salazar, 2021).

However, this has not implied a break with the past and the traditional. Both – traditional and modern – are combined in a symbiosis provided by the judicial system employees or practices, which are considered an asset for work development (Ongaro, 2009). Nevertheless, the need to maintain the judicial system as something controllable and protected. Above all, due to the fragility into which it can be transformed because of the introduction of new and disruptive decision-making forms.

Thus, modernization and tradition are two sides of the same system that combine to contribute to the fulfillment of democratic principles while looking for ways to make the judicial system more

flexible. Analyzing ongoing projects and their management allows us to understand how they can contribute to improving the system (Meneses, Oliveira, & Vasconcelos, 2016), namely in terms of efficiency and transparency.

This was, indeed, one of the objectives of this article, knowledge contribution regarding the projects under development in the Portuguese judicial system, but to complement this analysis with interviews carried out with officials of that same system. Thus, there is a deepening between what was defined at a strategic level and the challenges employees face when they try to implement these same projects, not only focusing on quantitative data, such as Ippolitia and Tria (2020) do.

As will be seen, the development and application of Information and Communication Technologies (ICT) have contributed to projects' development within the Portuguese judicial system, similar to what has been happening in the Public Administration (Dias & Gomes, 2021) and other judicial systems (Reiling & Contini, 2022).

According to Reiling and Contini (2022), implementing platforms in judicial systems has been a reality. Something boosted by the COVID-19 pandemic (Fabri, 2021). In Portugal, "platformization" and digitalization have also taken place gradually over the last few years. Examples of this are the CITIUS and SITAF platforms, which support the procedural process in the Courts.

Introducing new tools is not without challenges for those who define them but, above all, for those who use them daily to carry out their work. One of the challenges is precisely its daily use by people who perform their tasks almost always using paper or more traditional methods, as well as the introduction of premature tools for what is still in their application base (Fabri, 2021).

Based on the strategic redefinition for the modernization of the Portuguese judicial system is European integration (in 1986) and the increasingly perceptible influence of European guidelines in daily work. This influence comes from European funding (Correia & Videira, 2016) or legislative changes (Kappl, 2016), especially in the search for standardization of legal frameworks and international cooperation.

Thus, unlike Langbroek (2017), the European Union has a say in court administration. Some of the most recent European reports (European Commission, 2021; European Union, 2019; OECD, 2020) reveal the measures implemented and to be implemented in need to bring the judicial systems closer, which necessarily involves labor practices.

Nevertheless, following the motto discussed in this article, the challenges posed by Portuguese judicial system modernization are various. First, it includes multiple variables – human and financial resources, EU influence. Also, it is a very complex system. Moreover, different interconnected levels of analysis must be considered. As mentioned by Langbroek (2017),

Court administration on a national scale can be challenging. It is not only that courts can do many different things. Back offices in the courts may have hundreds of different procedural routines, to date automated, including filing and hearing cases on-line. Because courts are also decision-making organizations, play a role in law enforcement and in conflict resolution, their societal tasks are evident. Court administration and management are challenging, because they presuppose not only specialized legal knowledge at a

technical level, but also other knowledge, essentially concerning the usual management issues: personnel, information dissemination, organization, finances, IT communication, security and facilities. Each of those domains has local and national management issues, and local and national management issues are interrelated. (Langbroek, 2017, p. 1).

All dimensions indicated by the author were considered in the present study, although only a few are reflected in the results obtained through the interviews. This is the main contribution of the article, the reflection presented regarding the challenges that agents located in the daily work dynamics of the judicial system identify concerning the demands of modernization of their work.

2. Methodology

Eight semi-structured interviews were applied to individuals developing different functions in the Portuguese judicial system. The methodology applied had the primary goal of understanding the perception of Judicial system workers about the public policies' modernization, specifically the ones that interfere with their functions. The following table presents the interviewees' characterization. Their names and geographic place of work were deleted to guarantee confidentiality.

Table 1. Interviewees' characterization

Function in the judicial system	Sex	Years working in the function	Other functions occupied in the judicial system
Court Official_1	Female	5 (since 2017)	Public prosecution intern Lawyer
Lawyer	Female	26 (since 1996)	No
Court Official_2	Female	5 (since 2017)	Immigration and Border Service (SEF) Inspector
Notary	Female	4 (since 2018)	No
Notary	Male	16 (since 2006)	Lawyer
Registry Official	Female	19 (since 2003)	Lawyer
Judiciary Police Inspector / Interpol Inspector	Male	26 / 16 (since 1996 / 2006)	No
Public Prosecutor	Male	36 (since 1986)	No

The primary goal was to ensure interviewees were placed at different judicial system functions. This guaranteed different experiences, whether by contacting with diverse platforms and procedures.

Secondly, it was one's goal that the interviewees were geographically placed in different parts of the Country. That is not visible in the previous table. However, it was possible to interview workers from Lisbon, Porto, and Vila Nova de Famalicão (cities from the Center and North of Portugal), which also provide a wide range of experiences.

Finally, the goal of having as many men as women with different experience years and experiences from several professions was also achieved.

Following an interview guideline, the interviews were conducted between November and December 2021. Except for one interview, all the others were conducted in the presence. The

research project's goals were explained to all the interviewees, and permission to record (with the consent form signed) was given.

The interview's analysis occurred in two phases: first, the content analysis, where main categories and subcategories were defined. Those were relevant for the NVivo analysis (second phase), providing relevant insights regarding the most relevant topics in the interviewees' opinions to what the judicial system modernization process was concerning.

In the following table, it is possible to glimpse the categories and subcategories retrieved from the interviews' content analysis. It is possible to connect those categories with the challenges the interviewees highlight in implementing modernization projects: Reforms/Changes; People; UE integration and influence; Impact evaluation; Information and Communication Technologies (ICT), and Infocommunication Competences.

Table 2. Categories for the interviews' analysis with NVivo

Categories	Subcategories
Key actors	
	<i>Impact evaluation</i>
	<i>Influence on judicial system reforms</i>
UE influence	
Reforms/Changes	
	<i>Key moments</i>
	<i>More beneficial</i>
	<i>More detrimental</i>
	<i>Enabler's elements</i>
	<i>Obstacles</i>
Information and Communication Technologies	
	<i>Infocommunication competences</i>
Tradition and Modernization	
	<i>Conciliation</i>
	<i>Tension</i>
	<i>Optimal model</i>

The interviewees gave essential insights on the most relevant categories (and subcategories), and then those categories and subcategories allowed us to understand NVivo results.

The first section reflected on the significant projects developed in the Portuguese judicial system considering its modernization. And then, results retrieved from content and NVivo analysis were presented, gathering this with a specific analysis of the main challenges identified by the interviewees in this modernization process.

3. Current projects for the Portuguese judicial system modernization

This section presents the analysis performed on five official Governmental documents: 1996/1999 Justice Goals' Balance; Great Plan Options for 2000; Great Plan Options for 2020; 2016-2019 Closer Justice Program; 2020-2023 Closer Justice Program.

The paper's primary goal is to present the results of the interviews conducted with agents placed at the implementation level of the projects mentioned in those official documents. Since their work is current, the documents included in the analysis are also the most recent ones. Moreover, since the agents also mentioned some of those projects, it seemed relevant to consider when they were implemented and what were the main projects' goals and measures.

The *Plan for Modernization and Technology* (Ministério da Justiça, 2015), which had the slogan “for an agile, transparent and closer Justice”, presents the main projects in Portuguese Justice for the years between 2016 and 2019. This is the most recent and broader program to reorganize and modernize Justice. A Plan that was reprogrammed for the period of 2020 and 2023.

Before that, if one analyses Governmental Programs, since 1976, Justice has been at the center of interest for all Portuguese Governments as a relevant dimension to be modernized and changed², to accomplish the main Governments concern: effective access to Justice, in all its aspects. For that, measures such as Courts and Judges statute; Judiciary Police; Registration and Notary services; full usage of informatic services in the judicial system; prisons and penitentiary system; tutelary minors' services; and processes' de-bureaucratization have been implemented.

In all these changes, the year 1986 can be considered a mark. Indeed, the Portuguese integration into the European Union influenced the major Governmental decisions. If keywords such as modernization and innovation were already in the vocabulary of the Governmental programs, they gained a new meaning or, instead, a new relevance, considering the EU demands.

Moreover, since the '90s, regarding modernization and innovation, the introduction of informatic platforms and the relevance given to ICT were clear. The following table presents a balance of the development and effectiveness of the Great Plan Options between 1996-1999 for Justice.

Table 3. 1996/1999 Justice Goals' Balance³

Mission	Goals
Deepening of the Rule of Law and the approximation and adequacy of Justice to the demands of citizens and the increasingly demanding and pressing social dynamics.	New organizational model and functioning of judicial courts
	Court infrastructures recovered and enriched
	Development of judicial computerization programs (courts local networks and the national judicial network)
	Reform of Civil Procedure , court fees, simplification of procedures for debt collection and the reform of labor process and bankruptcy and corporate recovery codes
	Reform of child and youth protection laws at risk and educational tutelage
	Reinforcement of the capacities and operations of the Judiciary Police , the Penal and Criminal Procedure Codes were amended
	Reform of the medico-legal system , amendment of the drug law
	Innovation in the regime of non-provisional checks, witness protection, victim defense, community work, electronic surveillance of individuals awaiting trial and obliged to remain in housing, international judicial cooperation, and criminal identification
Implementation of the Action Program for the Prison System , aiming to reduce overcrowding prison and improve the conditions	

² This subject was exhaustively scrutinized in a paper submitted to a Journal and awaits an editorial decision.

³ <https://www.dgo.gov.pt/politicaorcamental/Paginas/GOP.aspx>, visited on February 27th, 2022.

	of incarceration, in terms of housing, health, education, professional training, sport and occupation
	At the registries and the notary , civil identification law was published and initiated the reform of the land register, along with the modernization of facilities and equipment and the computerization

In a brief analysis of the measures implemented between 1996 and 1999, one may conclude that the significant areas of Justice are represented, namely, Courts' reform, Codes' revision (Penal and Civil), prison system adjustments, protection of children and youth, definition of new financial crimes, and the Registries and Notary.

However, the most significant differences can be found in the comparative analysis of the goals presented between 2000 and 2020. Thus, in 2000, the guideline was approximately the same as that defined for 1996-1999. This is verified by the mission in each table (tables 1 and 2). The goals also remained the same, strengthening the approximation of Justice to the citizens.

This approximation has been reinforced since 2015 and becomes visible in the goals presented for 2020 in table 3. Therefore, attention must be taken to tables 2 and 3.

Table 4. Great Plan Options for 2000⁴

Mission	2000 Goals
A faster and more efficient Justice, closer and accessible to citizens, with modern and flexible structures, better suited to the needs of companies	Improving access to justice and the law , with respect for the principle of equality
	Extended use of forms of conciliation and extrajudicial conflict resolution
	Strengthening the fight against crime , in national, European and international frameworks
	Solving the problem of overcrowding in the prison system , dignifying the conditions of incarceration, and promoting effective social reinsertion of youth and adult
	Access of all citizens to the services of the registries and the notary , creation of integrated systems of commercial, land and property registers based on the communications network of the Justice ministry

Table 5. Great Plan Options for 2020⁵

Mission	2020 Goals
An efficient justice, at the service of rights and social-economic development	Making Justice closer to citizens, more efficient, modern, and accessible
	Increase transparency in the administration of justice
	Create conditions for improving the quality and effectiveness of judicial decisions

The previous tables show the differences between the two years of setting goals for Portuguese Justice. If, in 2000, the objectives were extensive, well demonstrative of what was intended to be achieved. In 2020, these same objectives were broad, then materialized in specific measures for each

⁴ <https://www.dgo.gov.pt/politicaorcamental/Paginas/GOP.aspx>, visited on February 27th, 2022.

⁵ <https://www.dgo.gov.pt/politicaorcamental/Paginas/GOP.aspx>, visited on February 27th, 2022.

area. In fact, for goal 1 of the year 2020, 19 measures were defined; for goal 2, 7 measures were defined, and for goal 3, 10 measures were defined.

Additionally, the area of Justice and the concrete measures defined as of 2016 had repercussions in the most varied Governmental areas: Social Security, Health, and National Defense, among others.

It is now essential to reflect upon the main Program of Portuguese Justice reform and modernization of 2016-2023. That Program is the Closer Justice (*Justiça + Próxima*⁶), and this is the one that is going to be analyzed, considering its main projects, its up-to-dateness, and the importance for Portuguese Justice.

In 2006, the Portuguese Government launched the Simplex Program⁷. Among other Public Administration areas, it included Justice and several measures to simplify legal modernization and apply electronic administration to different judicial services. The 2016 Simplex Program included 32 measures to simplify Justice administration and promote proximity to citizens and companies. The 2017 Simplex Program included 21 measures for the same purpose. Furthermore, the 2018 Simplex Program had 35 measures. Moreover, in 2022, the Simplex Program, in addition to the previously mentioned measures, counted 21 more.

However, legally it was essential to create funding to guarantee the maintenance of Justice Modernization. So, in 2011, aware of the financial and economic need to implement Justice Modernization, the Decree-Law nr. 14/2011, January 25th⁸ creates a specific fund for that purpose. The fund covered the following strands:

- a) Introduction of new technologies;
- b) Introduction of new processes or modification of existing processes to increase services efficiency or effectiveness;
- c) Updating and modernizing the judiciary and other infrastructures of the Justice system;
- d) Carrying out dissemination and training actions in the field of judicial modernization;
- e) Scientific research.

Moreover, all those strands were predicted in the Closer Justice 2016-2019 Program, divided into four pillars: efficiency, innovation, proximity, and humanization. Therefore, this Program is included in the broader Simplex Program, with all its measures being some of those included in Simplex.

⁶ <https://justicamaisproxima.justica.gov.pt/>, visited on February 27th, 2022.

⁷ <https://www.simplex.gov.pt/>, visited on February 27th, 2022.

⁸ https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1396&tabela=leis&so_miolo=S, visited on February 27th, 2022.

At the same time, in 2016 was also launched the National Reforms Plan⁹, defined as a set of structural reforms that promote the relaunch of investment and contribute to the sustainability of public finances, meeting the priorities identified by the European Commission.

In this specific context of recognizing the urgent need to reform Justice and respond to the EU demands, Closer Justice Program defines the specific needs, goals, and achievements. The main principles of this Program were “interoperability, reuse of information, resources’ sharing and new tools’ introduction, fostering a logic of collaboration between and within institutions, and promoting the change in the sector’s organizational culture” (Ministério da Justiça, 2019, p. 4).

In this Program, the most relevant projects, whether by their dimension or their impact on citizens’ lives were the following:

Table 6. Major projects included in the 2016-2019 Closer Justice Program

Project	Measures
Court + (<i>Tribunal</i> +)	<ul style="list-style-type: none"> - A centralized service desk supporting citizen (Desk + (<i>Balcão</i> +)) - Videoconferencing and automatic transcription of proceedings - Application of management tools such as the Service-Desk: “My Court” (“O Meu Tribunal”) or the management of the hearings - Improving of CITIUS (existing since 2014, it is the electronic platform where lawyers, magistrates and judicial offices contact with the law process) and SITAF (the same electronic platform as CITIUS, but for tax and administrative Courts)
Justiça.gov.pt – Justice Digital Platform	<ul style="list-style-type: none"> - Aggregate content and services - Simplify language - Offer a single point of access to information from the various areas of Justice: <ul style="list-style-type: none"> - Consultation of the nationality process status - Central Register of Effective Beneficiary - Brand search - Online Citizen Card schedule and renewal - Permanent certificate of business registration consultation - Brand register - Schedule passport request - Request or consult criminal records - Access to judicial processes
Electronic Judicial Certificate	<ul style="list-style-type: none"> - Obtain a dematerialized certificate from the judicial process - Access to a code, which can be transmitted to several individuals and/or companies, for consultation
Courts pending processes’ consultation	<ul style="list-style-type: none"> - Online consultation of the procedural acts and documents that are part of the process the individual is involved in
Online Criminal Record	<ul style="list-style-type: none"> - Request and consult a dematerialized citizen’s Criminal Record Certificate (CRC) - Access to a CRC code, which can be transmitted to several individuals and/or companies, for consultation
Language simplification of judicial notifications	<ul style="list-style-type: none"> - Use of easily understandable language and an information organization that responds more quickly to the understanding needs and actions to be taken in a particular service or communication
Justice Finishing	<ul style="list-style-type: none"> - Courts’ printing, enveloping, and mailing tasks automation
Judges and Prosecutors interface	<ul style="list-style-type: none"> - Develop of <i>Magistratus</i> (electronic platform for processes’ management having judges as target) and MP-Codex (electronic platform for processes’ management having as prosecutors as target)
BUPI – Digital Land Registry	<ul style="list-style-type: none"> - Physical and virtual desks that gathers all registration and georeferenced information related to lands and buildings

⁹ <https://www.portugal.gov.pt/pt/gc21/governo/programa/programa-nacional-de-reformas.aspx>, visited on February 27th, 2022.

Space Death (<i>Espaço Óbito</i>)	- Allows citizen to handle all matters related to the death of a family member or someone nearby, in person
Justice HUB	- Experimentation space, outside the traditional environment of Public Administration, which welcomes great projects of Justice transformation, with multidisciplinary teams

As one may conclude, at least since 2016, several different judicial areas have been experiencing reform processes. The same goal has been claimed in all the documents analyzed: to promote Justice, closeness to citizens, transparency, and efficiency. This is also stated in the Closer Justice Program 2020-2023 redefinition and the following are some of the significant projects that combine those principles¹⁰:

Table 7. Major projects included in the 2020-2023 Closer Justice Program

Project	Measures
Access to legal opinions on INPI Portal	- Availability of legal orders relating to industrial property rights administrative processes on the National Industrial Property Institute Web Portal
Assets + (<i>Ativos +</i>)	- Development of a system that allows, in a fast and efficient way, the identification and recovery of assets from criminal activity.
Justice Online Library	- Online library that gathers bibliographic information and all the scattered legislation and jurisprudence
Communication dematerialization between Courts and banks, insurance companies and other entities	- Communications' dematerialization regarding information requests between Courts and different entities
Drafter +	- Study the necessary requirements for the creation of a tool that helps the normative production, preferably with artificial intelligence mechanisms
Online Company in Europe	- Extend access to "Online Company" to all foreign citizens who have an electronic identification card, allowing the company creation
Inventories: interoperability between Notaries and Courts	- Automatic integration of information coming from the Notaries' inventory platform into CITIUS and vice versa
Online Justices of the Peace	- Develop a pilot of a "Virtual Justice of Peace Court" that gives citizens an agile way of accessing the justice system
Modernization of Audio and Video Management in Courts	- Modernization of the audio and video collection and reproduction equipment available in the Courts
Electronic Platform to Support Nationality	- Develop a nationality platform that allows for a faster and more technologically advanced response to the citizenship requests
Online Birth Registration Application	- Provide the birth registration request service through the Digital Justice Platform through authentication with the Digital Mobile Key or Citizen Card
Project "Inmate Citizen +"	- Develop digital access for the prison population, in a secure way, of a defined set of websites with essential information and services which facilitate the social reintegration process after incarceration period
Court + 360°	- Develop the proof of concept of "Court of the Future" under the paradigm «Digital Only»

Both Programs (2016-2019 and 2020-2023) conduct more significant changes in Justice, mainly by applying, in a more systematic way, Information and Communication Technologies to processes. Some of the projects already consider the use of Artificial Intelligence.

¹⁰ The projects that have a continuity from the 2016-2019 Program will not be repeated in this table.

However, in an external evaluation performed by OCDE (2020), some recommendations should be considered in order to collect all the benefits the modernization processes provide:

- Institutionalize the modernization processes and projects in policies, internal regulations, budgets, and other dimensions of the justice system.

- Enhance the involvement of the judiciary and individual judges in court transformation, process simplification, and strengthening of human resources.

- Make judicial specialization reforms effective.

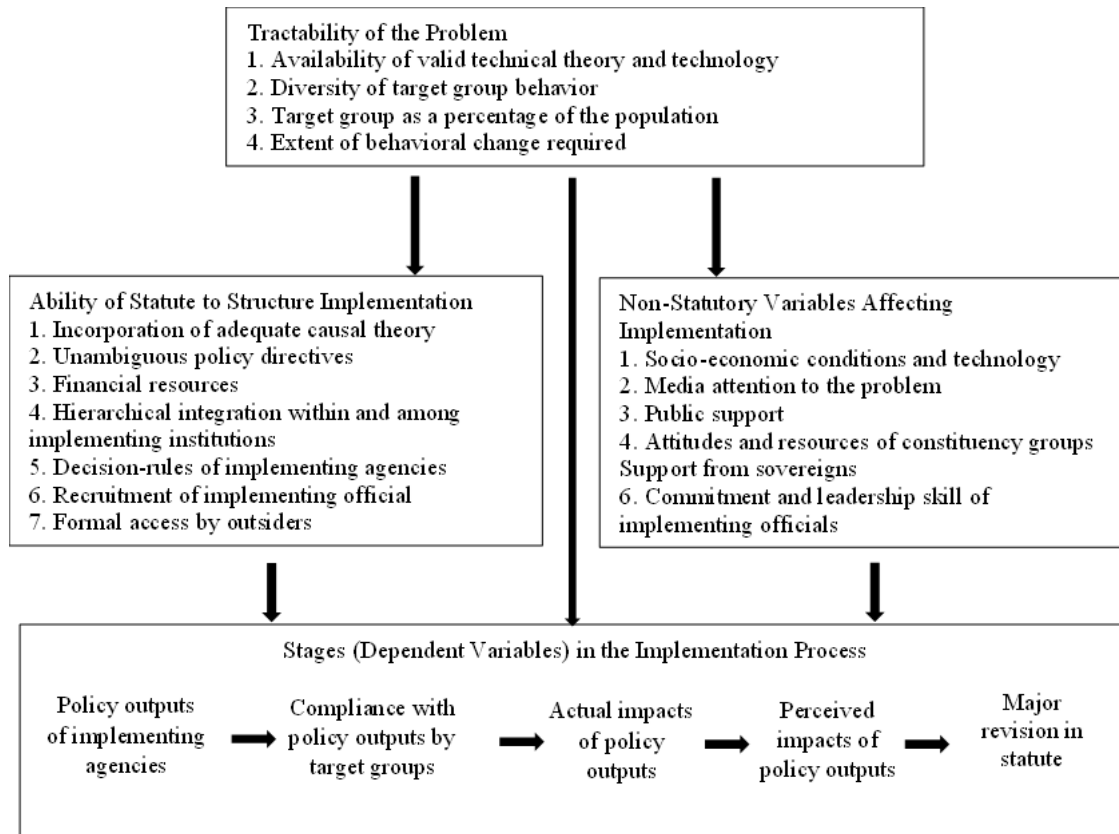
- Grant greater autonomy to court presidents and strengthen the powers of the Judicial Councils.

- Provide more substantial incentives for using alternative dispute resolution (ADR) processes, expanding them to other areas, and improving the resolution of enforcement cases.

- Develop a long-term and comprehensive justice strategy that combines different branches of power and integrates different reform elements by creating a people-centered, seamless justice ecosystem (OCDE, 2020, pp. 9-11).

Moreover, these OCDE recommendations almost imply the variables involved in the implementation process defined by Sabatier and Mazmanian (1980) regarding the Justice modernization process. The authors identified what they called a skeletal flow diagram, having three main areas: "(1) the tractability of the problem(s) being addressed by the statute; (2) the ability of the statute to favorably structure the implementation process; and (3) the net effect of a variety of "political" variables on the balance of support for statutory objectives." (Sabatier & Mazmanian, 1980, p. 541) and it is presented as follows.

Figure 1. Skeletal Flow Diagram of the Variables Involved in the Implementation Process



Source: Sabatier & Mazmanian (1980, p. 542)

The three previously mentioned components identified by the authors were (and still are) relevant for the judicial system modernization processes specifically for the projects' definition, whether the target groups and how they will respond to changes, the financial and infrastructural resources, socio-economic conditions, and media attention to the subject, among others. In the implementation stage, all those variables arise at some point, being previously considered or not.

From a broader perspective, Tavares (2019) and Teles (2020) provide more significant insights on some of the reforms implemented in Portuguese Public Administration over the last 20 years (with brief references to the change for a democratic regime). Together with the analysis conducted previously, the one that will be conducted in the next section, those insights allow the reader to understand and integrate the variables identified by Sabatier and Mazmanian and apply them to the implementation of judicial system modernization processes.

4. Challenges posed to the Portuguese judicial system modernization

Significant changes and reforms frequently imply enormous challenges. Those challenges can be posed to the actors involved in the reforms' definition, but they also arise to those at the reforms' implementation level. These will be in discussion in this section.

As O'Toole (2000) states, "Policy implementation is what develops between the establishment of an apparent intention on the part of government to do something, or to stop doing something, and the ultimate impact in the world of action." (O'Toole, 2000, p. 266). In the worst case scenario (but the one that Jann & Wegrich (2006) believe it's the most common), between what it is defined and what it is implemented, usually policies are "changed or even distorted; its execution delayed or even blocked altogether." (Jann & Wegrich, 2006, p. 51).

The need and urge to change and implement measures to transform the judicial system is frequently stated, making it more efficient and transparent (the proximity to the citizen was the next step). Indeed, from the official documents' analysis, namely the Portuguese Governmental Programs between 1976 and 2021, what is highlighted is the continuity of measures. Mostly, until 2014, there have not been many disruptive projects. Nevertheless, one may say that 2014, with the implementation of electronic platforms (CITIUS), provided a starting point for significant reforms.

The experience with CITIUS differs from most of the judicial system implemented projects. Its development happened from a bottom-up strategy. Court Officials felt the need to process judicial cases faster, having the documents digitally available, with the option of having the deadlines reminded. The ones more comfortable with programming presented the first version to their superiors (named Habilus then). Furthermore, from that and the perception of its utility to its widespread implementation, it was a quick jump.

So, as one of the interviewees explained, at the beginning (2014/2015), the Informatics was the Court Officials, and they developed the tools needed and improved them to suit their demands:

When I joined the Court, in 2017, we had a colleague... Because the IT professionals are all Court Official. But later, because they are able to work in this area, they end up dedicating themselves only to IT [...]. Court Official, since 2018.

So, from the judicial system modernization process analysis, one may agree with Jann & Wegrich (2006) on the frequently delayed execution. Furthermore, that is highlighted in most of the interviewees' discourses, which can lead to understanding that as a challenge.

Furthermore, the NVivo analysis already allowed us to conclude which challenges the involved actors face in the judicial system face. The following table shows the main results.

Table 8. Interviews' analysis with NVivo

Categories	Subcategories	Sources	References
Key actors		7	9
	<i>Impact evaluation</i>	5	9
	<i>Influence on judicial system reforms</i>	6	8
UE influence		7	11
Reforms/Changes		7	17
	<i>Key moments</i>	7	20
	<i>Beneficial</i>	7	9
	<i>Detrimental</i>	2	2
	<i>Enabler's elements</i>	7	14
	<i>Obstacles</i>	8	22
Information and Communication Technologies		7	13
	<i>Infocommunication competences</i>	8	10
Tradition and Modernization		4	5
	<i>Conciliation</i>	3	4
	<i>Tension</i>	6	7
	<i>Optimal model</i>	5	11

The actors mostly perceive all the reforms and changes applied to the daily processes as obstacles. Not contributing to the procedures' efficiency, but instead to its slowness. That dimension was referenced by the interviewees 22 times.

"[...] we still have different speeds. Firstly, this has to do with hardware, because people have different computers and, therefore, the speed with which any citizen goes to a police station, the fact that they have a computer with an operative system from 15 years ago, it takes 20 minutes to write a complaint, [...] and the citizen thinks that the service is crap. Notary, since 2006.

Interviewees identified several key moments regarding the judicial system modernization, mainly reporting to the last 10/15 years. The second most-mentioned dimension was the key moments of reforms and changes (20 references). Nevertheless, mostly, they referred to 2014, and the development of CITIUS/Habilus.

[...] everything has changed in the last 10, 15 years, from an informatics point of view. Moreover, it is going to change more now. Possibly, the next step is the distance acts. Notary, since 2006.

I think 2004/2005 were the turning years. Even accounting was all done by hand; there were books for everything. Now it's all computerized, it's all much easier, recording, maps, it's all more intuitive, isn't it?! Moreover, even the fact, for example, birth certificates, marriage registers, any certificate, I can have information from Algarve, the islands, even from the consulates, which have the same application. This makes it a lot faster because everything is computerized. I think that was the big change. Registry Official, since 2003.

When I started, including my internship, the difference between emerging platforms like CITIUS and SITAF, is brutal. It was a bunch of papers that were sent to the courts, and it was highly bureaucratic. We had to sign sheets and sheets and sheets and sheets. Lawyer, since 1996.

All those mentioned above imply that the number of excerpts reflects the reforms and changes applied (17 references). There were many examples (apart from the ones already stated previously) of

how things change, such as procedures, workflow, access to documents, and contact with the different actors involved in the judicial system.

Considering this, it is now essential to understand the most mentioned challenges by the interviewees, explicitly referring to the judicial system modernization process. Furthermore, in some cases, connections exist and are identified between working areas.

A) Reforms/Changes

The first challenge in the judicial system modernization process is related to the changes and reforms implemented. If those changes aim to improve working models in most cases, it is not always the result achieved. Instead, they promote inefficiencies and controversies.

Reforms and changes have a double influence: they contribute to the dematerialization process, efficiency, transparency, interoperability, and so on (or, at least, it is the intention of its implementation). Moreover, at the same time, it contributes to processes' delay, confusing working functions, different accesses to material resources help to create different speeds (as seen previously), and many other obstacles that weren't predicted when reforms were thought.

[...] one key moment was the publication of the Simplex legislation, based on the Simplex diplomas of 2007, 2008, 2009, and subsequent ones. They changed the paradigm. It was not positive for us [Notaries] because [...] we stopped having the monopoly of the acts, which were only done in a Notary. It began to be possible for Lawyers, Solicitors, Registries, and Chambers of Commerce also offer those services. [...]

On the other hand, [...] the validity control is no longer dependent on the legal professional, whomever he/she may be. For example, the company shares' transfer was placed in the company itself, which became the guarantor of legality. [...] what the law advocates is, effectively, that the company is the one to verify if the shares' transfers are done legally [...]. Notary, since 2006.

It's [everything] much faster because it's... Not wasting time with the post office, not wasting time even with communications. Everything is much faster, and everything is more straightforward, I think so. If everything works... The problem is that the core is human and IT resources... Registry Official, since 2003.

Imagine that we suspected that you were a terrible drug dealer or a terrible terrorist. We put cameras on the electricity poles next to your house and see everything happening. If you are going to enter or if you are going to leave. I'm at home, quiet, and I have my computer on duty, and I do surveillance. And, in the old days, I had to be there in the car, I had to be hidden there, I had to be careful that the neighbors didn't see me. And therefore, things have also evolved a lot in that direction. However, like everything else, it is a two-pronged stick, it works very well for us, but it also works well for others. Judiciary Police Inspector / Interpol Inspector, since 1996 / 2006.

With all the changes that have taken place, I'm optimistic. In my perspective, they are all beneficial. As always, you don't go as far as you should. However, that is already a flaw, I think, of the political, administrative, and judicial systems. There are still odd things, but this also has to do with process laws. Because, with the excuse of simplifying, sometimes the laws of the process are much more bureaucratized. Public Prosecutor, since 1986.

B) People

Individuals placed at the level of the implementation of reforms are the most crucial variable in modernization processes. One cannot exclude that the judicial system lives of and for people, whether being their workers or individuals/citizens who look for a problem solution.

Focusing on judicial system workers, they are responsible for making things work. Moreover, when some reform is implemented, it is their job to make it happen and, desirably, in a successful manner. Nevertheless, this is not how it always happens. Individuals are at the center of the decision process. Furthermore, also considering the tools they are given to find a solution for the problems they encounter, they have the power to decide whether they find solutions or even more problems.

Most of the time, individuals in the judicial system functions have a pragmatic way of dealing with problems. Mainly because if they don't have that perspective, they are also making their work heavier.

Facilitators will always be the added value to employees and everyone who works in justice, including judges and lawyers. I think there are people interested in what they are doing, who enjoy their work, and want everything to go as smoothly as possible. Court Official, since 2017.

Facilitators and obstacles are always the same, the people. Nowadays, it is a necessary condition in this process; the facilitators are the people and the biggest obstacle to reform. Notary, since 2006.

Even the few [people] here have embraced all the projects that have been launched almost stoically, it's true. [...] I think it also has a lot to do with human resources, at the same time as they are an obstacle. However, those who exist are the ones with whom we manage to take the boat. And then, we complain, but we manage to continue. Registry Official, since 2003.

C) UE integration and influence

The UE influence is evident. Since 1986 (and even before that, with all the preparation processes for Portuguese integration), all legal diplomas and judicial systems must consider UE directives and guidelines.

Because of this, judicial system workers face the challenge of knowing all European rules. The attention to all decisions and working processes must take into consideration national legislation (many of which are already adapted to European guidelines and directives) and European legislation. This doubles the challenge and the pressure.

The European Succession Regulation, of direct application. It completely changed the succession paradigm at the European level. [...] The digital signature we all use now for a thousand things is based on a previous regulation, a previous directive, and now on the current EIDA regulation, which is the regulation that serves as the basis... The very matters of matrimonial regimes, how they operate, and the impact on cross-border relations are European regulations. [...] Therefore, our life today is regulated by the rules of the European Union. Everything in our life is... I don't think there is a single area where it doesn't exist [European influence]... Notary, since 2006.

We are obliged to comply with many European regulations, which have been implemented in the last few years. Moreover, I notice now in my professional field. The European Regulation of the European Succession Certificate, a European standard, practically binds all the countries of the European Union. For example, this one that was implemented on the 1st of July a new energy certification law imposed by the European Union. A new law to combat money laundering will start to apply on January 1st, based on a European standard. Moreover, even all these laws on money laundering, which we know are European Union impositions. Notary, since 2018.

Because I also have to deal with the situation of European integration... Moreover, I only work in the municipality of [name of the municipality]. I have requests, for example, for children to return to France through international conventions. I have already had cases of forcing a child who was taken by the mother to Germany to return. I have requests from Switzerland to execute feeding pensions [...] More and more, we have situations like this, and there are parents who, for example, even have divorce proceedings in which the father resides in Germany, the mother resides in Germany, and the children are studying in Germany. And they file a divorce action here in Portugal, and if there are minor children, the consequent regulation of parental responsibilities. There's no problem. It is appreciated and decided here. Moreover, each time, in my day-to-day, I have more situations like these, that's true. Public Prosecutor, since 1986.

D) Impact evaluation

Measuring impact should be a frequent practice. This is what allows us to conclude whether a measure is achieving the desired result or not. Moreover, if not, analyze why that is happening and what can be done to change it positively.

However important and urgent this may seem, it is not an easy process. It involves several stages, at different levels, considering multiple individuals (Batista & Domingos, 2017). Moreover, sometimes, the results are not what is expected, which makes it preferable not to evaluate.

In the Portuguese judicial system, most interviewees consider that this impact evaluation is ineffective. The NVivo results show that only nine references were made to this topic. However, the excerpts also demonstrate that if many reports and inquiries are filed to evaluate daily work, that is not much done with those reports. At least it is a general feeling.

That doesn't even happen [impact evaluation], in most cases, it doesn't happen. And the correct way to legislate is exactly that, it's through pilots, through verification of impacts on the ground, through pilots that take into account the geographic factors, the factors... Cultural perception is an essential factor. Notary, since 2006.

I think there is an attempt to do it [impact evaluation] because this pressure must also exist from above. We spend our lives having to respond to reports and fill in maps, and it's a bureaucratic work that I often ask myself, "why did I take the law course" because I'm more of a manager than a Registry Official. [...] And I must respond. [...] And we have short response times. Hierarchically, some people want to know the data. We are a little controlled by it. We are. Registry Official, since 2003.

[...] every month, every week they [the superiors] have statistics to do, all the acts that we do are controlled, every week Lisbon sends us the number of acts we did, what time did we turn on the computer, what time did we turn it off. All of that is controlled, and so the clerks have goals. Court Official, since 2017.

They invented a situation that now exists every year: the Government assesses every crime. Everyone must fill out a few papers for all the Portuguese Police forces, which is a huge joke, but they are forced to fill a few papers to understand the evolution. Of course, that is statistical data. All statistical data can be manipulated. They always take a beauty treatment. Nobody wants things to be too bad. However, of course, they demonstrate some reality. Judiciary Police Inspector / Interpol Inspector, since 1996 / 2006.

E) Information and Communication Technologies (ICT) and Infocommunication Competences

ICT was the basis of most of the reforms in the Portuguese judicial system. In some cases, those tools (hardware and software) were the ones that allowed the reforms to occur, as well as their widespread. Implementing some working principles, such as dematerialization, de-bureaucratization, and interoperability, have at its core the use of ICT.

However, this does not mean that its usage and implementation happen equally in all the judicial system services, or even that in the same service, all its workers have the same preparation, meaning the infocommunication competencies and skills. At the same time, it is also essential to consider that the citizen and judicial system's users may not have the tools or the competencies.

Reforms cannot wait for everything to be prepared and equipped. However, these inequalities and digital divides must be considered when a sensible area is transformed.

[ICT] are fundamental, and the pandemic also shows that. Because before COVID, Court officials could not work from home, and there was no teleworking, which was only for judges and prosecutors. There was not even that possibility, and no one ever raised such a question. And then, with the pandemic, it was seen that we can work from home and that the processes continue to be processed. You can perfectly understand the electronic process. The process is increasingly electronic, and we already have processes that we do not even print. There is no physical process. It is just electronic. Court Official_1, since 2017.

It is logical that later, in evolutionary terms, we also see it in our careers. Suddenly we are left with a considerable number of completely unthinkable tools. Computerization has brought entirely crazy things. Today the wiretaps are by the second, we can know to the centimeter where the person is, if he/she is in the house, if he/she is on the 17th floor, if he/she is in the bathroom or if he/she is in the kitchen. The information handling system is entirely different. Today, for example, in computer terms, I can, after 5 minutes, know what is happening in Brazil. Judiciary Police Inspector / Interpol Inspector, since 1996 / 2006.

[ICT] had a huge impact, a huge impact. Whether in the ease of writing decisions or the ease... Currently, if I am on shift and I have a geographic area from [mentions municipalities from the working area], I do not need to move just for dispatch. Here in the office, I have access to these processes, and I dispatch these processes. I only must move if there is due diligence. Public Prosecutor, since 1986.

As said, competencies for ICT usage are also an important variable to have in mind when evaluating and analyzing reforms:

I had colleagues of all ages, [...] with 30 years old, who quickly mastered all the necessary tools. Even in the trials, where there were videoconferences, a whole panoply of systems had to be used. The people who had it more accessible, the younger ones, could easily do it. Of course, some older people had more difficulty keeping up with the evolution of technologies. Court Official_2, since 2017.

The fact that we can do business at a distance because it is technically possible does not mean that we should do it now because we still don't have enough digitally literate citizens to do it in a way that cuts across society. Notary, since 2006.

Effectively, all the instruments and mechanisms that have been given to us, many times, with self-learning and with just practice, I think that everyone is... Some have more difficulties than others. It has to do with personal skills, sometimes with age. However, more or less, I think that everyone can follow this evolution, yes. Registry Official, since 2003.

Conclusions

Many transformations are happening right now in the Portuguese judicial system. Since the beginning of the decade (but inevitably related to previous historical events, such as the EU integration, economic crises, and pandemic), several moments have been marked in the modernization process.

2000, with the Internet diffusion, was the starting point for interoperability and the introduction of efficiency in some services. In 2008, with the availability of specific databases, namely, in registries. In 2014, the reorganization of the judiciary map, where some Courts were extinguished, specialization was widespread, and informatic platforms for processes' management were developed.

In 2018/2019, Portugal (and the world) felt an economic crisis, delaying some structural reforms but enhancing others, such as the interoperability and intercommunication of the informatic systems. Most recently, 2020 and 2021 were also years when challenges were posed to the national Government. However, local services management (Registries, Courts, Lawyers' offices, police forces) were the ones who felt the direct impacts on workflow and organization. Telework is being imposed on areas that never thought it was possible.

The previously mentioned are only some of the measures that impact the changes in the judicial systems' work development because the legislation is constantly changing and adapting to the new social demands, which also brings changes.

By analyzing official documents, it was possible to conclude that several projects are being developed in different judicial system areas. Those projects aim to contribute to the judicial systems' efficiency, efficacy, transparency, and proximity. The main reform program is *Justiça + Próxima* (Closer Justice), which is now in its new time frame: 2020-2023.

The projects are the cause and consequence of the challenges posed to the judicial system modernization. They are the source of the main difficulties workers face. However, the projects have also been created to respond to the primary challenges workers identified. The main challenges were:

- The reforms/changes implemented in the judicial system contribute to new practices and the transformation of working flows. Those new practices frequently come with some resistance.

- People are also a challenge, in the sense of that mentioned resistance. Considering the age of the judicial system human resources, many do not feel comfortable with new technologies and are resistant to learning new ways of doing.

- European Union integration and the more significant European influence is another challenge. In their daily practices, legislative reforms constantly confront workers, which implies learning those changes.

- Another challenge mentioned was the impact evaluation, its weight on daily, monthly, and annual work because of the monthly reports' demands and the numbers' importance. This takes plenty of time and imposes pressure that does not combine with the work agents already must perform.

- The final identified challenge was the implementation of ICT in labor practices and the infocommunication competencies. Most of the projects identified previously have at their core the integration of ICT. However, that integration, in most cases, didn't come with learning programs, which delayed some of the implementation processes and caused some resistance from the workers' point of view.

Nevertheless, one may claim that the general evaluation of the Portuguese judicial system workers is positive. Throughout the years, many have been challenges. Some reforms make more sense than others, and some are easier to implement. Moreover, apart from the feeling that they are not heard when it comes to implementing changes (often mentioned), the main opinion is that an optimal model would provide for specialization, whether in services provided or in Law areas of practice.

The research led to the conclusion that a lot is left to be done, but also that there was a path (sometimes a troubled one) important for the beneficial changes that occurred and for the future of the Portuguese judicial system dematerialization de-bureaucratization, and interoperability. Moreover, these work characteristics help accomplish the judicial system goals: transparency, proximity, adequate access to Justice, and efficiency.

The study was conceived to reflect on the judicial system modernization process and how this process is combined with traditional practices. The study's main limitation is the absence of an opinion from the judicial system users: the citizen. Nevertheless, it wasn't possible to hear citizens' opinions on that matter and the impact modernization projects have on their daily lives.

As to future study, combining the latter conclusions, one may suggest that the challenges discussed are intertwined with the variable access to Justice, this concept perceived here in its wider form: economic, literacy, and infrastructure access. And including the voices of the judicial system users. This would allow understanding of the challenges that can be transformed into opportunities or are only obstacles to that access.

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Acknowledgements

The Research Project “The Two Faces of Janus in the Public Policies Modernization Process: Innovation and Tradition. The Portuguese Judicial System” is funded by FCT - Foundation for Science and Technology, under the reference 2020.07241.BD.

ANEXO 6

ARTIGO 6

Melro, A., Oliveira, L. & Teles, F. Modernization spheres of the Portuguese judicial system. (Aguarda decisão editorial).

Modernization spheres of the Portuguese judicial system¹

Abstract

Portuguese judicial system modernization process can be divided into several dimensions. Considering the key actors' speeches, placed at the level of the judicial system reforms' implementation, the paper explores the main spheres that are part of that modernization process. From the analysis of who these key actors are, through the role of the European Union, to the relevance of information and communication technologies and corresponding infocommunicational skills, there are several spheres highlighted. This analysis culminates in the perception of how modernization has been implemented. The interviews applied to eight key actors are analyzed, concluding on the current inevitability of the Portuguese judicial system modernization, a vision enhanced by the 2019 pandemic and by the changes to which the World and the labor market were submitted to. The paper presents the content analysis' results applied to the interviews.

Keywords

Portuguese judicial system; modernization; spheres of modernization; Justice

Introduction

In 1983, Walzer (1999) wrote his book *Spheres of Justice*. As the title suggests, the author thinks about Justice in terms of spheres. It is the goods' distribution between spheres that is the starting point for his conception of justice. Each of these spheres includes a good or a set of goods, and the criteria for their distribution. All societies have different spheres of justice, although the separation and complexity of spheres is probably more marked in the contemporary world. Often, the spheres are not fully autonomous, but have relative autonomy in relation to each other (Walzer, 1999, pp. 21-45).

Walzer (1999) identifies 11 spheres of justice: membership; social security; money and merchandise; public positions; hard work; leisure; education; kinship and love; divine grace; social significance; and political power. All these 11 spheres are perceived as goods, which may be distributed among citizens, avoiding predominance of some sphere over the other in specific individuals. But admitting the existence of a complex equality.

I.e., in complex equality some individuals may possess a big amount of goods placed at a specific sphere, and that is acceptable if this means that those citizens need that good. However, predominance doesn't imply some social meaning associated to that amount of goods. It implies

¹ Melro, A., Oliveira, L. & Teles, F. Modernization spheres of the Portuguese judicial system. Artigo submetido em outubro de 2022. Aguarda decisão editorial.

advantage and using that same advantage for its own purpose. Because of the inequalities that predominance produces, it should be avoided.

Applying this theory to the paper discussion, one may say that some Portuguese judicial system modernization spheres are the dimensions (goods in Walzer's conception) included by the interviewed key actors in that modernization process. The optimal situation is that all the dimensions are developed equally, and all the actors placed at the judicial system implementation level have access to those goods (dimensions and information about them) equally as well.

Thus, the dimensions/spheres described and analyzed in the following section were the ones pointed out by the interviewees. In each one of the spheres, goods and/or sets of goods are included as well as the criteria for distributing those goods. And in this distribution, some inequalities are produced. At the same time, spheres are dependent on one another.

For example, when mentioning European Union (EU) influence, the goods or sets of goods may be the projects' funding or the legal directives. Which may favor some groups of people, communities, or Countries (whether because of complex equality or predominance) and depends on the key actors' work (which justifies the distribution of funding) and, at the same time, influences it.

Furthermore, another different aspect this paper considers regarding Walzer's theory is that the author thinks of justice as a philosophical concept, as an equilibrium of distribution and right's access. The paper perceives the concept of Justice/the judicial system as a public policy Melro (2021), composed by all the elements described in the sections below (and many more), by all the actors (whether the ones that defines it, implements it and/or is assisted by it) and as a response to problems the citizen faces.

The paper is divided into two sections. The first one identifies and explains the Portuguese judicial system modernization spheres. These spheres were retrieved from the interviews' analysis and were the most mentioned dimensions by the interviewees, whether because of its underdevelopment or lack of existence in the judicial system; whether because of its evident development.

The first dimension/sphere are precisely the key actors or their relevance for the modernization process to occur. The second sphere is the European Union influence. The third sphere are the key moments interviewees identified as being the ones defining their current work. The fourth dimension is the impact of some specific projects and/or reforms. And the fifth and last sphere are the Information and Communication Technologies and the related competences to use those ICT.

The second section introduces the methodology followed to achieve the results presented in the first section. This section also characterizes the interviewees.

Finally, the paper presents some conclusions regarding the spheres most mentioned by the interviewees and their role in the Portuguese judicial system modernization processes.

1. Modernization spheres of the Portuguese judicial system

Modernization and reform processes in Public Administration have been discussed since the beginning of the XXth century (obviously, one could go further and mention authors and theories that already analyzed reform processes before this period, but the aim is to consider theories linked to New Public Management, post-NPM reform-style, governance, etc.)

Brunsson and Olsen (1993) explored the administrative changes and the way organizations prepares themselves to implement reform processes. The authors believe that reforms must follow a top-down structure to happen in a coordinated way.

Opposing to that theory, Peters (1998) showed that reforms could be implemented by following a bottom-up strategy, where some Public Administration sectors and departments are perceived as laboratories, where pilots take place, always considering the importance of trial-error iterations (in a controlled environment).

One of these experiments was what happened at the Sintra Court. In 2016, the Project Court + (*Tribunal +*) was launched, considering the full involvement of its workers (Public Prosecutors, Judges, Court Officials, etc.) both at the level of the strategy definition and implementation. This pilot and its positive results were then distributed through all the Courts in Portugal.

The paper analyses the main results some dimensions had, when posing interviewees questions regarding their opinion on the Portuguese judicial system modernization process. This section is the outcome of the interviews' content analysis. Interviewees identified of being core spheres of that modernization process the following: key actors; EU; some key moments; the impact of some measures; and the ICT and the infocommunication competences. All these spheres will be explained and explored.

1.1. Key actors of the Portuguese judicial System modernization

In the modernization process, actors placed at the implementation level are its driven force. This conclusion was shared by most of the interviewees. And, since it was possible to collect the opinions of actors placed at different positions and professional categories, in the judicial system, there was a tendency to believe that the actors of that specific position or category were the more relevant ones in terms of allowing the modernization measures to occur. And this is present in the discourses below:

Modest opinions aside, I think Court Officials [are the most relevant actors], because they are the basis of any judicial process. Of course, all the other parties, all the other subjects that participate in the process are important, namely, the lawyers with their legal documents, the judges, who give the solution. But, if the Court Official doesn't know how to build the process from start to finish and how to give it the necessary progress, for example, what to do after the deadlines have elapsed and which diligence to do next, a judicial process can easily be lost in time, forgotten. Court Official_2, since 2017.

In terms of what is politically correct, it should be said that it is the Administration [the most relevant actor], but it's not. They have a lot of ideas and, from time to time, they try to innovate, but it's really on the ground that we realize whether things work or not. We are the ones who must deal with the citizens, we are the ones who must deal with the frustrations... Therefore, I think that a lot has been due to the dedication and commitment of those who apply in the field and there is a lot of pressure, of course. Registry Official, since 2003.

I think it's us [the most relevant actors], because, strictly speaking, the judges, in this field, are also very, I won't say old-fashioned, but... They really like to "see" things. I speak from my own experience. Judges who master IT are rare. If there is any problem we always must go there to help, either because the computer does not turn on, or because the document does not open, for example if the color of the PDF icon was red and now is grey, they can't find it. Court Official_1, since 2017.

However, another opinion was shared. One that places in the middle the relevance of macro entities, like EU and Central Administration, and entities and actors which occupy measures' implementation positions.

I mean, whoever is in the European Union and who is leading our government will always be the key actors in these policies that are implemented. But, above all, who is in the European Commission, of course. Notary, since 2018.

I think that the great driver is always the State, in one way or another, whether the modernization measure gains life at the level of the definition or the implementation. Because this can be born in several places, it can be born in civil society, it can be born in a political party, but in the end the State is enforceable. Therefore, it is the State and the people who, at that moment, govern it, who are always the great drivers of reform. Because they are the ones who carry out the reform, but also because often a good idea that is poorly executed goes very wrong. Notary, since 2006.

These same conclusions were already achieved in the research project conducted by Vecchi (2013). When studying the "Cantieri" ("Building sites") program, an Italian public administration modernization project, specifically focused on local public institutions, the author concluded that several sets of actors were relevant for the implementation of the program. This followed a strategy of communities of practice and transfer of tested innovations to include local actors' participation. And this participation was required at the beginning of the project, meaning, by using a bottom-up strategy (Vecchi, 2013, p. 8).

But, as well as the interviewees mentioned, Vecchi (2013) also concluded that the European Commission and national Ministers played a relevant role, whether by hearing what local entities had to say and their suggestions after projects' implementation, or by consulting them before the modernization process began.

In conclusion, one may claim that the modernization process is the result of the interaction between two major groups of people (that, obviously, are divided into several other groups with

smaller dimension): the ones placed at the level of public policies definition and the ones placed at its implementation level. Exchanging places considering the process follows a top-down strategy or a bottom-up one.

1.2. European Union influence

As already previously mentioned, the interviewees perceived the importance and major influence in their work coming from the European Union (EU). Changes conducted in the law, to make it more homogeneous and similar to the other European Countries, imply changes in the actors' daily working practices.

I will give a small example, so simple, the matter of succession. In the past, everything was much easier, we applied Portuguese civil code and law of nationality in the succession processes. Nowadays, we must know where the person died, if (s)he decided to put away the country of residence or not, and this brings us some constraints. Although we have access to foreign legislation, God knows what it's like to know our own, we must be constantly studying the legislation of others. And regulations are being imposed to us. It is difficult to apply, it is like the property regime, or the foreign marriages regime. We now live for foreigners, literally. I have days when I think that if I work for a Portuguese, it's to register a citizen's card, everything that is a process is all foreigners. And we must always pay attention to this, not only to our legislation, but also foreign legislation, which is complicated. Registry Official, since 2003.

Today, anyone within the European Union is delivered in Portugal, even if (s)he is a German, even if (s)he is a Frenchman, even if it is a document, whatever it is, the transition is much easier. In the past, there were very few cases at Interpol. Today, we work a lot. Because what Interpol does is that connection. [...] *In addition to all the rules we have, which are more or less homogeneous, which were necessarily made to be more homogeneous. We now have access to and have a lot of processes that come from transnational origins.* Judiciary Police Inspector / Interpol inspector, since 1996 / 2006.

The EU influence has its roots in a quite remote time. For the current research project matters, the year of 1986 is relevant, for what is the year when Portugal officially was integrated in the EU. Obviously, a lot of work of law adjustment, citizen access to law regulation, judicial procedures changing in its various sectors, such as judiciary police, courts, prisons, registrations, and notaries..., had been conducted having in mind the goal, which was Portuguese integration.

But, as Dias (2016) states, the EU influence marked some important periods regarding the stabilization of Portuguese judicial system:

- a) Between 1985 and 1995, which the author entitles as the consolidation of the judicial system
- b) Between 1996 and 2004, characterized by the author as Justice facing a major crisis
- c) Between 2005 and 2010, a period when the judicial system is described as suffering of confrontation, reform, and assessment

d) Between 2011 and 2014, marked by the reforms imposed to the judicial system, mainly because of EU influence.

One could add two more periods to the latter:

e) Between 2015 and 2018, being this period characterized by the judicial system reorganization as giving priority to citizen proximity

f) Between 2019 and 2022, as the period of tele Justice, as in the incorporation of ICT and adaptation of the judicial system services to the online.

All the periods identified had a major influence of EU, whether by financing the reforms or by supervising them. And its inevitable that this influence is felt by local actors in their reforms' implementation.

1.3. Key moments of the Portuguese judicial System modernization

Besides the moments identified previously, which are relevant not only in terms of understanding the EU influence. There are some specific judicial system projects which marked eras. The interviewees also referred these projects and periods as being the ones they remember that changed their work:

[...] from 2007, 2008, 2009, the Land, Commercial, Civil and Automobile registration databases were all dematerialized and, from that moment on, the paradigm changed completely. Notary, since 2006.

This is notorious, people noticed that, suddenly, I can't give a precise date, that border that existed, disappeared. People today are in Europe and feel that they can go anywhere and that they just need their Identity Card... Judiciary Police Inspector / Interpol inspector, since 1996 / 2006.

I was in Lisbon in 2001, the Internet was already being used, but still at the beginning. So, it started, more or less, from that moment. [...] The other [moment] was, precisely, the judicial map organization [in 2013], mainly, dividing it into competences... Public Prosecutor, since 1986.

When platforms such as CIUTIS and SITAF appeared, and even in the registry and notaries, which now everything is processed through platforms, the technological advance that has taken place has made the work much faster, much less bureaucratic. Lawyer, since 1996.

Thus, mainly after the beginning of the 2000 decade, with the introduction of new tools and platforms, and the judicial system organization, it is perceived as a disruptive moment in terms of procedures and specialization. And this period had its highlight with the Closer Justice Plan (*Plano Justiça + Próxima*), launched in 2016.

Apart from the specific projects defined and implemented within this Plan², the priorities were interoperability, information reuse, resource sharing and new tools' introduction. And as an example of the technological platforms' integration in the judicial system, one may point out the recent development of Magistratus and MP Codex, platforms for processes' management by public prosecutors and judges.

The platforms before those ones were CITIUS and SITAF. These started to be developed in 2014, as a response to processes' management by lawyers, official courts, execution agents and other parts involved in the judicial and/or administrative process.

Referring to this sphere in specific, the identification of key moments in the Portuguese judicial system modernization, it is possible to conclude that, mostly the last 20 decades, the defined plans, programs, and projects go along with which are the society demands. In fact, some of the major challenges and changes conducted in the last 2 years are a result of what were the pandemic demands. And this is still influencing future projects and fundings, for example, the Closer Justice Plan was reorganized renamed (Closer Justice Plan Powered By PRR 22|25) in order to include the European funding for this particular purpose and the projects were thought in a way that ICT presence is even more evident.

1.4. Impact and its evaluation

Referring to the process of the judicial power modernization, Cavalcanti (1978) already claimed that "Modernization is a process of adjusting the powers of the State in order to adapt them to the requirements of development." (Cavalcanti, 1978, p. 3). The way to understand if this adaptation worked is by defining impact indicators and conducting impact evaluations.

The OECD (2001) considers that impact evaluation has two main goals: lesson-learning and accountability. Public policies' impact evaluation may be defined as a tool to assess if the outcomes were the expected ones or not when implementing a certain measure or plan. That said, impact evaluation implies counterfactual Asian Development Bank (2006).

As for the indicator's definition, the interviewees of the current research project consider that that happens. However, the process of evaluation is still a blur.

Every month, DGAJ [General Direction of Justice Administration] wants to know how processes' pending is, how many processes have entered, how many processes have been completed, why is there a process that has not been changed for more than two months, why is there an accountability that is closed for more than 4 years. Court Official_1, since 2017.

And then, each local system informs the district. Currently, F. [name of the city] is part of the B. [name of the district] district and, therefore, I inform B. of my statistics. Colleagues from Bar. [name of the city], G. [name of the city], also report this. Afterwards, the coordinating prosecutor, in B., takes care of it all. In turn, it informs the Regional Prosecutor's Office in Porto. The

² Which were analyzed in detail in a paper that is now under revision.

Regional Prosecutor's Office informs Lisbon. [...] And after this work done by the Prosecutor's Office, the Prosecutor's statistics are communicated to the Ministry of Justice. The Magistracy does the same thing. And their statistics and figures are also communicated to the Ministry of Justice. And in the Ministry of Justice there is an organization that collects all this information and, not only in numbers but in other things, it can be taken to legislative projects. Public Prosecutor, since 1986.

As a start, no one wants to know about the transitional regimes, even laws that have transitional regimes, nobody believes in transitional regimes. Laws are launched and no one cares about the transitional regime for anything, the law comes into force, and it is already known that at the end of the transitional regime it will continue as it is, because no one is about to worry about that. Notary, since 2006.

For this last interviewee, the impact evaluation is so utopic that even the laws' transitional regime, which is defined to guarantee that the society is ready to receive that law, giving society a moment to adapt (*vacatio legis*), is completely ignored.

Nowadays, judicial system measures' impact evaluation is taken serious mostly by the actors placed at the level of the public policies' definition. These ones, from time to time, must report to EU its results and main impacts. But, as became clear from the transcripts, there are also the actors placed at the implementation level who are responsible to gather all the data. And for these two groups of people impact evaluation is not some fantasy, or at least the information gathering is something real.

Apart from all the intern reports the Ministry of Justice conducts, an important external report on the Justice transformation evaluation was performed by OECD (2020). This report evaluated four main dimensions: the effective proximity of Justice to the citizen; the implementation of ICT in the judicial system; the Courts' specific projects; and judicial system human resources.

This report was a request the Ministry of Justice addressed to OECD in order to fill in the existent gap between the statistical information send to the EU and the data treatment and dissemination, which always resulted in outdated information regarding the judicial system evolution.

One may conclude that judicial system impact evaluation is a concern and a priority. However, not always is it possible to conduct effective impact evaluation processes, not even in a useful time. In most cases what happens is data gathering and an urgent treatment to respond some specific demands.

All statistical data, for everything that can be done, can be manipulated. They always take a beauty treatment; nobody wants things to be too bad. But, of course, they demonstrate some reality. Judiciary Police Inspector / Interpol inspector, since 1996 / 2006.

1.5. Information and Communication Technologies and competences

The final modernization sphere is the ICT and infocommunication competences. ICT gained a whole new dimension with the 2019 pandemic, specifically at the Portuguese judicial system. New working methodologies, new tools, new ways of interacting.

Specifically, the judicial system because, as the interviewees explained, there were a lot of adjustments to be made in a sector that wasn't used to deal with ICT invasion. Namely, judiciary workers had to adjust to the new reality of telework,

Regarding the section where I work, I think we were all prepared [to use ICT], because we are a relatively young section. Court Official_1, since 2017.

Not everyone has it [the will to use ICT and learn how to use them], nor is it willing, but I think most people, above all the younger ones like and want to learn and work with this type of systems and in this type of area. Notary, 2018.

It is difficult, it is very difficult [to make the transition for the digital], even because sometimes, it is the Magistrates who insist on the physical process. Also, truth be told, the judicial process, especially if it's very voluminous, it's very difficult to see it just digitally, it's very, very difficult. And the physical process makes it much easier to consult X documents, X parts.... I think there always has to be a balance. Of course, the ideal is to eliminate paper, no waste. Of course, electronics are always much more practical. Court Official_1, since 2017.

Most judges in this field are still very much attached to paper. Even attached on going to court, they like to go, they don't really like to work from home. Therefore, I think that these changes that have taken place are largely due to the influence of the Court Officials and because the IT staff are also Court Officials. The improvements are always the result of our day-to-day difficulties and we because we question. Court Official_1, since 2017.

In addition of using ICT and integrating them in working procedures, there's another variable that must be taken into account, which is the skills users need to have or to develop in order to efficiently use ICT. So, infocommunication competences are, along with the access to ICT, a relevant variable when assessing the individual availability to use them.

Those infocommunication competences may be defined as including three variables: "the ability to deal with information (location, evaluation, and application) and the ability to establish and maintain communication processes. Underlying these two competencies are operational competencies, linked to the handling of hardware and software." (Borges, Bezerra, Diomondes, & Coutinho, 2013, pp. 8-9).

This aspect was also mentioned by the interviewees:

From what I notice, especially the Court Officials, they want it [to use ICT]. Because those who deal more even with the practical part of the system are the Court Officials. They carry out orders, decisions, and with different instances at the IT level. And they like to have training actions [to use ICT]. Because each court also has an Official who is specialized in this. Public Prosecutor, since 1986.

Almost all of them [Judiciary Police workers] are well educated, almost all of them are intelligent. The selection course worked very well, and then people adapt. I remember, for example, that there were two or three who were not in the mood to catch up with the computers, because that, in fact, at the beginning demanded an effort of having to learn. But as soon as they realized that there was something called Internet and that they could read the newspaper there and that, in fact, that would make their lives easier, immediately, people already on the verge of retirement, went to take the Windows course, went to do everything and accepted immediately, because, in fact, made it a lot easier for them. Judiciary Police Inspector / Interpol inspector, since 1996 / 2006.

I think there are two different levels. There is a level, first, that was not suggested in the published law, which is the training of legal professionals. These are the first ones who don't have the skills, and they don't have two types of skills, they don't have the digital literacy competence, to be able to manage processes, which is easy, but it always takes some time to understand: processes' complexity, videos' recording, signatures' verification, PDFs' verification, if they are well signed, if they are not, this always takes some time. And then, essentially, the issue of training citizens' digital literacy, which is something that doesn't takes a year or two and there are people who will always be excluded from the system. There are people who, for a variety of reasons, will never enter the system, they will never have enough digital literacy to do these kinds of acts. Notary, since 2006.

Along with the transformations, reforms and modernization processes that are happening in the Portuguese judicial system, there is a dimension that must be considered (and sometimes it's ignored), which is the Judicial Officials' development of infocommunication skill and competences.

As seen in the previous sections, there are a lot of projects which are now under development, that include ICT or live through ICT. If one takes a glance at the Closer Justice Plan it is easy to understand the judicial system informatization, dematerialization and digitization happening right now and that will continue in the years to come.

And all this transformations and reforms, all the projects should effectively include judicial Officials and works, to comply judicial system main principles: interoperability, proximity to citizen, efficiency, transparency, humanization, etc.

2. Methodology

The paper is part of a PhD research project and presents the results of the interviews applied to eight Portuguese judicial system workers, placed at different working positions and departments of that judicial system.

The interviews had the main goal of acquiring opinions regarding the evolution of the judicial system modernization process, considering interviewees' experience. For that purpose, an interview guide was elaborated, to follow the participants throughout the questions one wanted to be answered.

The semi-structured interviews took place between November and December 2021. Only two interviews were applied online. The other six were conducted in person. To all the interviewees the purpose of the study was explained, as well as the informed consent and confidentiality rules.

Table 1 characterizes the participants. Their names and city of work were omitted.

Table 1. Interviewees' characterization

Function in the judicial system	Gender	Years working in the function	Other functions occupied in the judicial system
Court Official_1	Female	5 (since 2017)	Public prosecution intern Lawyer
Lawyer	Female	26 (since 1996)	No
Court Official_2	Female	5 (since 2017)	Immigration and Border Service (SEF) Inspector
Notary	Female	4 (since 2018)	No
Notary	Male	16 (since 2006)	Lawyer
Registry Official	Female	19 (since 2003)	Lawyer
Judiciary Police Inspector / Interpol inspector	Male	26 / 16 (since 1996 / 2006)	No
Public Prosecutor	Male	36 (since 1986)	No

Along with the interview guide, categories and subcategories were created. As the research project aimed to qualify content, interviews were analyzed considering the categories and subcategories displayed below, to allow the discourses' qualification. Those categories are displayed on table 2.

Table 2. Categories and subcategories applied to interviews' analysis

Categories	Subcategories
Key actors	
	<i>Impact evaluation</i>
	<i>Influence on judicial system reforms</i>
UE influence	
Reforms/Changes	
	<i>Key moments</i>
	<i>Beneficial</i>
	<i>Detrimental</i>
	<i>Enabler's elements</i>
	<i>Obstacles</i>
Information and Communication Technologies	
	<i>Infocommunication competences</i>
Tradition and Modernization	
	<i>Conciliation</i>
	<i>Tension</i>
	<i>Optimal model</i>

One may perceive that, five main categories came out from the interviews' analysis: Key actors; UE influence; Reforms/Changes; Information and Communication Technologies and Tradition and

Modernization. Four of them were subdivided in other categories. This way it was possible to conduct an even more complete analysis, considering the sphere mentioned in the subsections above.

The content analysis technique also followed the guidelines of Bryman (2012, pp. 288-308). The author considers "Content analysis is an approach to the analysis of documents and texts (which may be printed or visual) that seeks to quantify content in terms of predetermined categories and in a systematic and replicable manner." (Bryman, 2012, p. 289).

Conclusions

The first and main conclusion retrieved from the paper is that the Portuguese judicial system is highly complex. This complexity is mostly due to the services and departments that are included in it. This means a lot of processes and procedures, a lot of human and material resources. And if some reform is to be made in one of the departments, that necessarily has impact in the others.

Another reason for that complexity is that the judicial system frequently responds to sensitive problems. When the citizen looks for the judicial system to get a solution for some problem, often that problem is something quite serious. This usually means that problems don't have a quick solution. Instead, they take years to solve. Something already reported in Portugal, as well as in other Countries as well Dias (2016 e Pedroso et al. (2003 e Vecchi (2013, 2019).

Following Walzer's theory Walzer (1999), and adapting it to what were the main spheres mentioned by the interviewees regarding the judicial system modernization process, the paper concludes on five main spheres of modernization: Key actors; European Union influence; Key moments; Impact and its evaluation, and Information and Communication Technologies and infocommunication competences.

As for the key actors, it is concluded that the opinions differ. If some (most of them) believe the key actors are themselves because they are the ones who implement the modernization measures. Others believe that key actors are the ones placed at the level of the modernization process definition.

The European Union influence was mentioned by most of the interviewees. They feel that everything in their work today is inevitably linked to the EU or to the directives it emanates. Therefore, it is impossible not to feel this influence in the minor tasks of their daily activities.

The third sphere was the key moments. And for that, interviewees mentioned the year they recall was the most remarkable, mostly because of some project and/or major change it was applied. The years of 2000, 2007/2008, 2014 and 2019 were the most mentioned. And linked to specific projects, for example, CITIUS and SITAF, electronic platforms developed for processes organization and access.

The impact evaluation was perceived as relevant. In fact, interviewees consider that there is some work already done in the data collection regarding their work. They fill in reports on a monthly basis, their work is monitored and, every once in a while, other statistics or data is requested for their superiors. However, they also think a lot of work is left to be done, mostly in what transparency is

concerned. Some of the data they report don't understand why it is asked and final reports are sometimes inaccurate because they don't represent the reality.

The ICT and infocommunication competences sphere are the most prominent ones retrieved from the discourses. This sphere is present in all the other ones. Interviewees consider that ICT played (and will continue to play) a relevant role in their work, they influence the way they work today and are a piece that can never be forgotten. And the 2019 pandemic was important to show that judicial work can also be performed at distance and having as a great resource electronic platforms.

In fact, when major conclusion is that all the spheres are intertwined. Key actors depend on each other and on the European Union, who also depends on key actors (the ones that are on the field) for the work to be done. Impact evaluation depends on key actors, but also is influenced on the European Union directives. ICT and infocommunication competences depend on the EU, on key actors and on impact evaluation.

Therefore, all the spheres of modernization of the Portuguese judicial system all relevant on its own. But their relevance is better understood when linked with the others.

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Acknowledgements

The Research Project “The Two Faces of Janus in the Public Policies Modernization Process: Innovation and Tradition. The Portuguese Judicial System” is funded by FCT - Foundation for Science and Technology, under the reference 2020.07241.BD.

ANEXO 7

ARTIGO 7

Melro, A., Teles, F & Oliveira, L. The two faces of Janus of the Portuguese Judicial System implementation: tradition and modernization. (Aguarda decisão editorial).

The two faces of Janus of the Portuguese Judicial System implementation: tradition and modernization¹

Abstract

Evolution in public policies occur when two or more sides come into conflict (Jagers, Matti, & Nordblom, 2020). Thus, moments of tension between programs, parties, policies, at a broader level, but also between work practices, at a specifically localized level, contribute to the introduction of innovations or reforms. At the level of the judicial system, it is no different. Through the analysis of the Portuguese judicial system collaborators' speeches, the paper allows the understanding of how tradition and modernization, often seen as two poles of the same force, two sides of Janus, are combined to find an ideal model for leveraging the system. From the analysis of interviews conducted with key actors located at the level of the implementation of tools and work practices, processes, and projects, it is concluded that this ideal model advocates specialization and modernization but having as ally the tradition.

Keywords

Portuguese judicial System; Modernization; Tradition, Reform; Innovation

Introduction

In the last 20 years, Portuguese judicial system has seen a transformation regarding its modernization, namely, its computerization and digitization. Although this transformation has been stated as needed already since 1976, its effective implementation is quite recent or, better said, the most prominent projects have been developed in the last 20 years.

The paper starts with a brief characterization of the Portuguese judicial system, specifically its organization and hierarchy, human resources' statistics, and the role of Information and Communication Technologies (ICT) for the development of judicial system modernization projects. And, after a study to what are the main Judicial System tension and conciliation focal points, it provides some insights of an ideal model to be developed.

The proposal of an ideal model applied to the Portuguese judicial system is the result of the analysis applied to eight semi-structured and deepen interviews, conducted in a PhD research project that is being developed since 2021. Those interviews allowed to primarily conclude that, although major modernization and innovation processes are already being implemented, the main judicial system principles (transparency, fair access to Justice and Law, efficiency, efficacy, proximity, humanity, ...) are not being fully achieved.

¹ Melro, A., Teles, F & Oliveira, L. The two faces of Janus of the Portuguese Judicial System implementation: tradition and modernization. Artigo submetido em julho de 2022. Aguarda decisão editorial.

So, for a judicial system ideal model to be tangible important elements must exist, such as: services should have access to updated ICT, collaborators' specialization should be a reality, the cost of accessing to Justice should be lower, the used language to communicate with citizens should be more accessible. Summing up, an ideal model effectively allows citizens to be treated with equity, and Justice is truly transparent, efficient, and closer to citizens.

The analysis of which dimensions should be privileged differ according to the perspective studies adopt. If one aims to understand the economic impact the judicial system has and relating this to its efficiency, then production lines and technologies usage must be considered (Ippoliti & Tria, 2020). If the goal is to understand the difference brought by the application of the main and recent technological developments to the judicial system, then dimensions such as Artificial Intelligence and decision process must be taken into account (Zhao, Wang, & Shi, 2021).

In fact, legal tech is being under scrutiny since it would allow the judicial system to be more efficient (Wang, 2020), but also provide fair and faster decisions (which, on the other hand, makes them more transparent). However, the presence of judicial workers (judges, court officials, public prosecutors, police officers, lawyers, notaries and others) has the main responsibility in making sure the process follows the path it should, in order to ensure secure and certain decisions to citizens.

The judicial system is an area characterized by being sensible and, because of that, it is important that some variables are present. When citizens look for the judicial system to have access to a decision in some matter of their lives, they also look for the fairest decision, the confidence and security that that decision is the definitive and right one, people who was involved in that decision were completely focused on what they were doing. To sum up, they need to trust the process and people surrounding it.

For that, if it also important and even necessary that the judicial system accompanies society changes and evolution, it is also demanding that modernization processes come along with some traditional ones, the proximity of judicial system workers to the decision process, and, most important, the proximity of these workers to citizens.

To understand how tradition and modernization are combined in the Portuguese judicial system, the paper starts by characterizing it, its main organs, and departments, and how it is structured. But also, by showing some Justice statistics and the way the ICT infrastructures have evolved in the recent years and their relevance in the main projects implemented. The second section of the paper explains the methodology path. Followed by focusing on the tension elements that still exist (or that are being brought by new variables) in the Portuguese judicial system. It will answer to the questions: which are the tension/conflict elements? Why do they exist? Are they new or do they exist for long time now? How can they be solved or diminished? The fourth section elaborates on the conciliation elements. And some of them are like the ones discussed in the previous section. Some of the questions aimed to be answered are: which are the conciliation elements? How can they be leverage? Are they new or do they exist for long time now?

The two previous sections focus the analysis on two viewpoints: the one from the judicial system workers and the one from the citizens, which look for the judicial system to solve some problem they are facing. Next, the paper reflects on an ideal model retrieved from the sections of tension and conciliation and considering the conclusions achieved previously. Those three sections are enriched with agents' discourses, excerpts from the interviews which clarify the assumptions. Finally, the paper finishes with some conclusions achieved so far.

1. Portuguese judicial System characterization

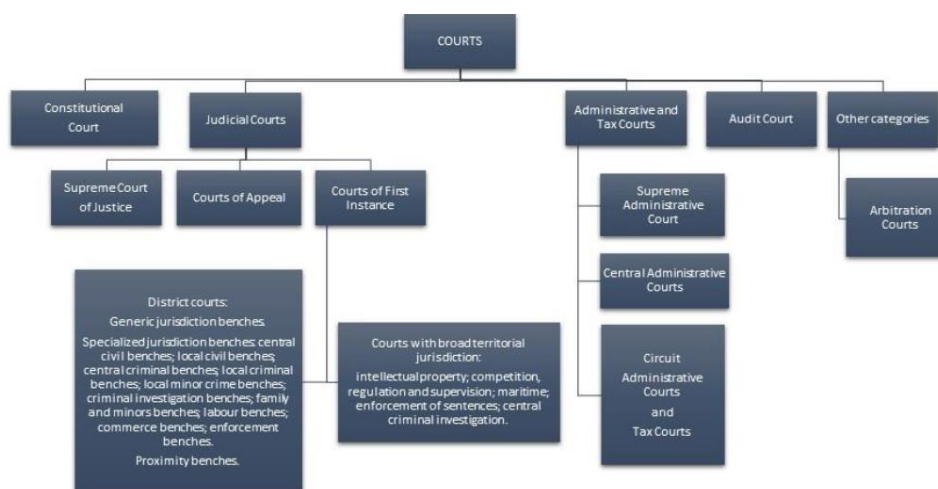
One of the ways to better understand the reason why some procedures remain attached to traditional models and why they sometimes conflict with modernization processes and reforms is by taking a tour through the organization and hierarchy of the system in analysis. That is what this section will do.

That said, considering the main goals of this paper (understanding how tradition and modernization are combined towards the same ending in the Portuguese judicial system and what factors contribute for the tension and conciliation existing between them, concluding with the presentation of an ideal model) and the factors that contribute to achieve those goals, this characterization will consider three main dimensions: organization and hierarchy of the judiciary system, human resources, and projects and ICT investment.

1.1. Portuguese judiciary system organization

Portuguese judicial system is organized in two main jurisdictional orders: Administrative Courts and Civil Courts. Apart from that there are two other parallel decision dimensions: the Constitutional Court and the Court of Auditors. The division is as follows:

Figure 1. Portuguese judiciary system organization



Source: Justice Transformation in Portugal (OCDE, 2020)

Starting by explaining the Portuguese judiciary system, this is divided into three layers, according to the appeal possibilities. In the civil courts there are, from bottom to top, the District Courts, the Court of Appeal, and the Supreme Court of Justice. In the Administrative Courts there are the Fiscal and Administrative Courts, the Central Administrative Courts, and the Supreme Administrative Courts. On the top, and with different tasks there are the Constitutional Court and the Court of Auditors.

The first Instance courts (or the District Courts) are divided into specialized competence courts, enlarged territorial competence and courts of general jurisdiction. The specialized competence courts are: central civil, local civil, central criminal, local criminal, local small criminality, criminal prosecution, family and minors, labor, commerce, and execution.

The enlarged territorial competence courts are divided into intellectual property court; competition, regulation, and supervision court; navy court; supervisory court; and the criminal prosecution central court. There are also courts of general jurisdiction and of proximity. The main justifications for this division are the districts' dimensions, the value of the judicial process, the geography, and the subject of the trial.

Regarding the resolution of disputes there are another three kinds of solutions, defined as the alternative dispute resolution mechanisms: Arbitration Courts, Peace Court, and Mediation (civil, commercial, and criminal). Furthermore, and directly intertwined with the judiciary system, there are different kinds of services and resources, such as, Notaries, Registries, Police forces, Lawyers...

1.2. Portuguese judicial system human resources

The judiciary professions are of seven kinds: Judges, Public Prosecutors, Lawyers, Solicitors, Enforcement Agents, Judicial Administrators and Court Officials. However, there are other important judicial professions, which intertwined with the judiciary ones, namely, the Notaries, the Criminal Police organs (Criminal Investigation Department, Public Security Police, Republican National Guard and the Aliens and Borders Department), Conservators and employees at the registries' offices.

The following table shows the number of employees in Portuguese courts:

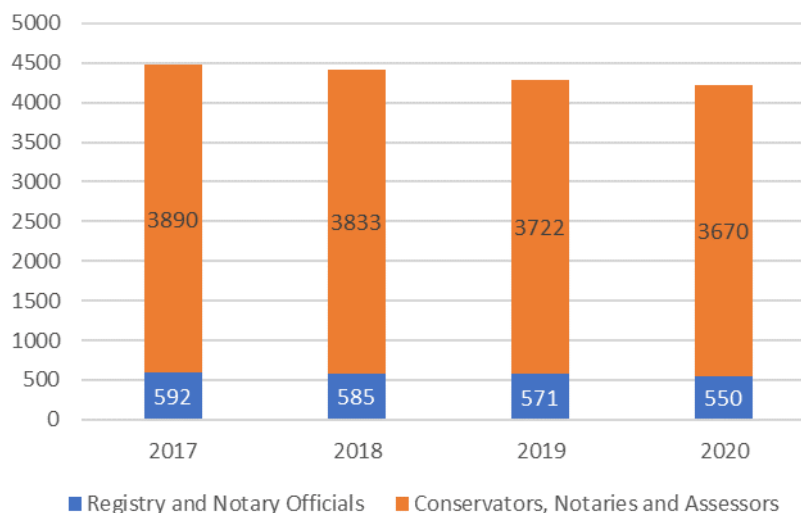
Table 1. Human Resources in Courts, according to category, in 1991, 2001, 2011 and 2021

Year	2021	2011	2001	1991
Career/Category	Nr. of Employees	Nr. of Employees	Nr. of Employees	Nr. of Employees
CIVIL COURTS	10.338	11.138	11.985	8.178
Judges	1.735	1.748	1.440	1.028
Public Prosecutors	1.393	1.459	1.070	793
Court Officials	7.040	7.899	9.446	6.161
FISCAL AND ADMINISTRATIVE COURTS	805	669	583	251
Judges	286	182	132	98
Public Prosecutors	87	88	79	35

Court Officials	423	374	187	111
CONSTITUCIONAL COURT	110	75	85	69
Judges	13	12	11	6
Public Prosecutors	3	2	2	2
Court Officials	36	33	40	28

Source: Portuguese Justice Statistics (General-Direction of Justice Politics²)

Graph 1. Human resources of Registries and Notaries (Nr.)



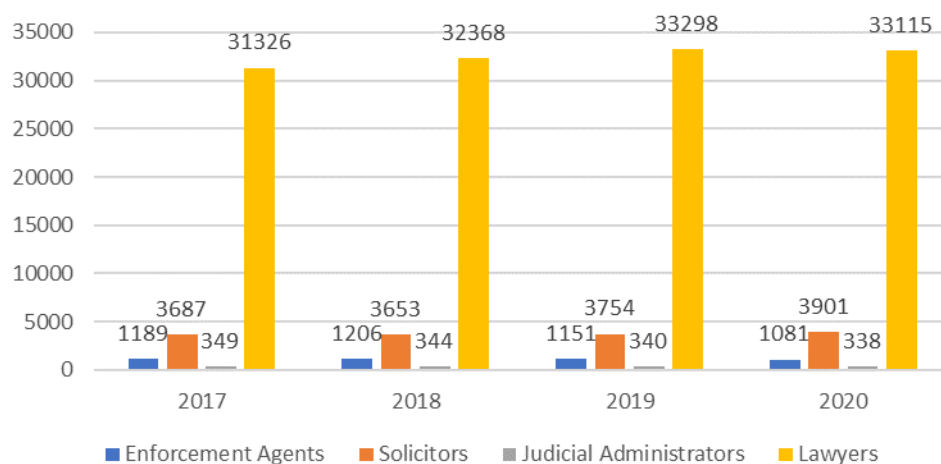
Source: Minister of Justice (2021)

The number of human resources in those services is decreasing. If there was a time when some procedures were assigned to Notaries (for example, inventories), the reforms in Justice retreated and returned them to the Courts.

In addition, the judicial organization diminished the number of public Conservators per District, which reduced the number of human resources in that area. Also, it is important to mention that Conservators and Notaries no longer belong exclusively to the public sector. There are now private services that citizens can look for to have a problem solved.

² Information available at <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/>.

Graph 2. Other human resources in the judicial system (Nr.)



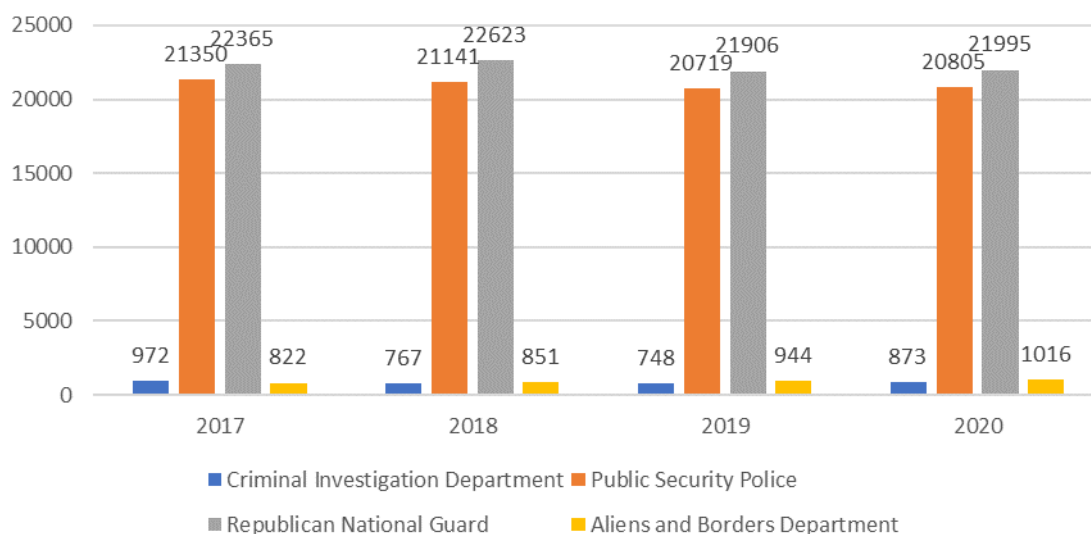
Source: Minister of Justice (2021)

Enforcement agents, solicitors and judicial administrators are relatively new professions in the judicial system. The first ones act mainly in the execution processes and the judicial administrators have a major role in insolvency processes. Their recent creation results in fewer courses and academic education in those areas, which in turn results in fewer human resources.

On the contrary, there are more than 10 law faculties in Portugal, between public and private. Every year, each faculty graduates more than 200 law students, and the majority choose to become a lawyer. That somehow justifies the high number of lawyers.

Directly involved in the judicial system, whether through crime investigation or maintaining law, order and social peace, are the police forces. The most recruited for those activities and which are involved in the judicial system are four: Criminal Investigation Department, Public Security Police, Republican National Guard, Aliens and Borders Department.

Graph 3. Human resources in the police forces (Nr.)



Source: Pordata³

The Public Security Police and the Republican National Guard are the two main forces (in dimension, at least). The high numbers, and the divergence between those numbers and the other two police forces is justified by the vacancies open per year, the selection criteria and the years needed to finish the course. However, the four police forces are constantly working together, and their activities frequently intersect.

1.3. Information and Communication Technologies and their role for the Portuguese judicial system modernization projects

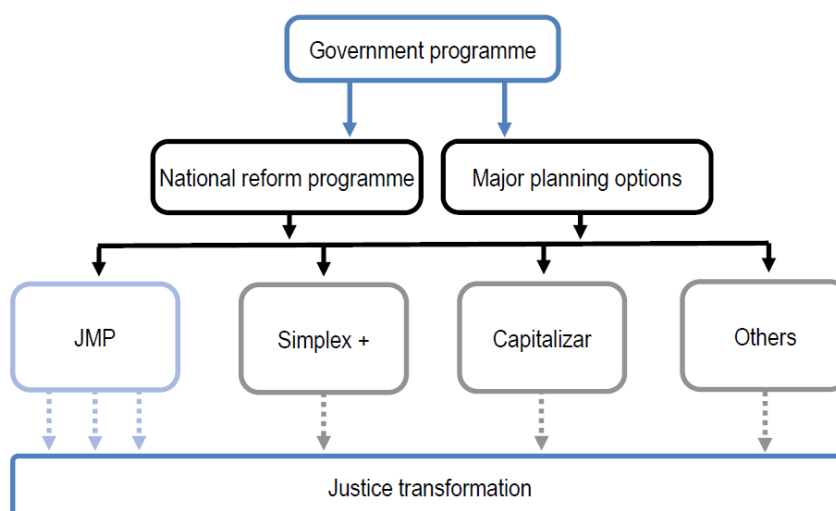
The development and implementation of modernization and innovation projects in the judicial system has been a concern in recent years. The main one is *Justiça + Próxima* (Closer Justice). The goal was to answer to four main resolutions: efficiency, transparency, proximity, and humanity. The way to do it was by involving human resources from the judicial system, citizens served by it and ICT.

This transformation was placed in a major one that had been occurring in Public Administration, being Justice one of the biggest and complex ones. The goals were to “create a better business climate; strengthen trust in justice institutions and improving the perception of justice; strengthen the transparency of justice through improved service; improve responsiveness and efficiency of services and meeting budget constraints; bring justice closer to people.” (OCDE, 2020, p. 33).

The flow of Justice transformation is as follows:

³ Available at <https://www.pordata.pt/en/Theme/Portugal/Justice+and+Security-19>.

Figure 2. Portugal's strategies for justice transformation



Source: Justice Transformation in Portugal (OCDE, 2020)

The Government programme defines the main guidelines for all the Public Administration departments and offices. Which is then materialized in two other documents: National reform programme and Major planning options. These two documents define which are the main projects (JPM (stands for *Justiça + Próxima*), Simplex + and *Capitalizar*, for example).

The one directly related to Justice is JPM. However, Simplex + and *Capitalizar* also have a strong influence in what are the changes in procedures, especially in transform processes into more agile ones.

The JPM project is defined as “digital by default”, where measures suggested by citizens and stakeholders, mainly based on technology, were implemented to transform Justice in a more efficient, transparent, closer, and humane response. The project is in its second edition (2015-2019 and 2020-2023) and have more than 150 measures⁴.

The Simplex + project introduced new ways of achieving simplification. From introducing online services and platforms which allow citizens and businesses to access certifications, registries, and all kinds of digital official personal documentation, to offering new ways of communication between the different judicial system services and citizens. It is a transversal project and its paradigmatic of how intertwined services in the judicial system are. The project was launched in 2006 and is now in its now seventh edition⁵.

The *Capitalizar* project is more focused on businesses, serving as an incentive for companies to invest in their (re)capitalization and innovation, using credit lines offered by the government. It is a major project which is also influenced by measures applied in the judicial system, which aim to transform the communication between the judicial system and companies more digitized and agile.

⁴ More information available at <https://justicamaisproxima.justica.gov.pt/>.

⁵ More information available at <https://www.simplex.gov.pt/>.

All the projects combined result in an investment of 15,5 million euros in ICT sector plans and ICT Strategy, specifically in the Minister of Justice, between 2016 and 2020 (Minister of the Presidency and Administrative Modernization, 2020). Resulting in Justice transformation.

2. Methodology

The paper presents the results of eight semi-structured interviews applied to agents placed at the level of the judicial system implementation processes (table 1). Those were the ones (as well as citizens) who felt the changes more deeply and daily, its advances and retreats, constraints, and agilities. And, for that reason, were important to understand how modernization and tradition live together in the judicial system. Those interviews were also scrutinized with content analysis and NVivo Software.

Table 2. Interviewees' characterization

Function in the judicial system	Gender	Years working in the function	Other functions occupied in the judicial system
Court Official_1	Female	5 (since 2017)	Public prosecution intern Lawyer
Lawyer	Female	26 (since 1996)	No
Court Official_2	Female	5 (since 2017)	Immigration and Border Service (SEF) Inspector
Notary	Female	4 (since 2018)	No
Notary	Male	16 (since 2006)	Lawyer
Registry Official	Female	19 (since 2003)	Lawyer
Criminal Investigation Inspector / Interpol Inspector	Male	26 / 16 (since 1996 / 2006)	No
Public Prosecutor	Male	36 (since 1986)	No

These interviews took place between November 19th and December 27th, 2021. Only two interviews were conducted online. The other six already happen in presence. The interviews were recorded, only for transcript's analysis purposes and all the participants were informed of the project's goals and signed an informed consent. The names of the interviews were omitted for data protection purposes, considering the sensible information provided.

3. Elements of tension

After a brief characterization of the Portuguese judicial system regarding three main dimensions – organization and hierarchy of the judiciary system, human resources, and projects and ICT investment – it is now time to include in the analysis the existent tension elements between modernization and tradition when it comes to introduce reforms in that judicial system. For that study, two main viewpoints will be adopted: the one from the workers and the one from the citizens. To what the workers' viewpoint is concerned excerpts from the interviewees will be included.

3.1. Judicial System workers' point of view

One of the biggest challenges that COVID-19 pandemic brought to workers placed at the judicial system was the massively usage of technology. If platforms like CITIUS and SITAF were already developed and implemented⁶, the electronic processing was considered and ruled, and, in some specific cases, listening to witnesses and/or other relevant declarations in trials of some parties was happening, other realities were rarer. For instance, telework; eliminating paper use, mostly in big processes; and adopting clearer language and citizens' full access to electronic processes.

In fact, one of the tensions workers mentioned was the existent difference of technology usage between generations, which can be related to digital literacy. If, for new generations, telework is just as adapted to the judiciary work as to any other kind or adapting to new digital platforms or to new tools included in the ones existing is faster. For older generations all those transformations are harder to accept and engage in.

Older judges end up being more resistant to this change and like to see people face to face. Even because one thing is to hear a witness in person, and another to hear her/him by video call. Court Official_1, since 2017.

[...] the judges, in this field, are also very, I won't say old-fashioned, but... They really like to "see" things. I speak from my own experience. Judges who master IT are rare. If there is any problem we always must go there to help, either because the computer does not turn on, or because the document does not open, for example if the color of the PDF icon was red and now is grey, they can't find it. Court Official_1, since 2017.

[...] in the beginning not everyone had access to a computer. They were distributed hierarchically, first for the Judges, the Public Prosecutors, for the Court Officials, and finally for the Assistants. But there were people who didn't want to, people who didn't want teleworking, older people. [...] there are people in their 60s and older, who are waiting for retirement, and who didn't want to telework, because, leaving house, going to court was the only thing accepted, they didn't have internet at home, they didn't adapt. Older people, yes. Court Official_1, since 2017.

In addition to those barriers there is the constant need to access process in their physical version. Especially when referring to large processes with more than two or three volumes.

Most judges in this field are still very much attached to paper. Even attached on going to court, they like to go, they don't really like to work from home. Therefore, I think that these changes that have taken place are largely due to the influence of the Court Officials and because the IT staff are also Court Officials. The improvements are always the result of our day-to-day difficulties and because we question. Court Official_1, since 2017.

⁶ Platforms where the judicial and administrative processes are dealt, where Judges, Public Prosecutors, Enforcement Agents, Lawyers, Citizens and all other interested parties in the process have access to its information.

In fact, large processes are frequently translated into delays in Justice, one of the biggest problems identified by the Government⁷ and OCDE evaluations (OCDE, 2020). And some implemented measures to prevent and eliminate those delays have in its core the introduction of technology in its various forms, whether through the development of management platforms or by implementing management practices. However, not without some constraints and tensions.

[...] first, which was also not recommended in the law that was published, which is the training of legal professionals. These are the first ones who don't have the skills, and they don't have two types of skills, they don't have the competence of digital literacy, in a mass way, to be able to manage processes. Which are easy, but always take some time. Time to understand: the complexity of the processes, the way of videos' recording, the signatures' verification, PDF's verification, if they are well signed, if they are not, this always takes some time. Notary, since 2006.

Implementing technology tools in the judiciary system brings up very sensible questions, such as data protection. But introducing them in complex and large processes is a challenge harder to overcome, for many different reasons: the will verification, the demand to be alone when testifying in trial.

[...] we are still used to having the deed read in the notary's office, in front of the notary. But more and more, and with the pandemic, it has come to prove that technology is essential in the modernization of our profession. In particular, and now with the possibility, which is now on stand-by, but would come into force November 1st, which is the acts to be electronically, namely, divorces, marriages, and even public deeds. Notary, since 2018.

Another tension aspect mentioned by the interviewees was the lack of workers' specialization, namely judges and public prosecutors.

As for lawyers, I defend specialization, because a lawyer who knows everything, who knows a little of everything, knows a lot about nothing. And for judges it is the same. Therefore, I consider that it is essential, even to have fewer appeal decisions that pass the appeals, decisions revoked with appeals. Therefore, I think specialization at the level of judges and public prosecutors is fundamental, as I think it is fundamental at the level of lawyers, I have always defended it. Lawyer, since 1996.

[...] nowadays, it is impossible, in the legal world, to be a specialist in general practice, as I usually say, it is impossible, even in any law firms. For magistrates there must be specialization because it is impossible to encompass everything. Public Prosecutor, since 1986.

Last but not the least, there are three elements which contribute for creating tension moments in developing modernization processes in the judicial system: the lack of human resources, the outdated ICT and the constant demand to present numbers and satisfying ones, regarding to services' dispatched.

⁷ Information available at <https://estatisticas.justica.gov.pt/sites/siej/pt-pt>.

As seen in the previous section, the number of human resources in the judicial system is low, specifically, in professions such as judges, public prosecutors and court officials.

The reality is that there is a shortage of people in the courts, the courts have mostly elderly people. In all sections there is a shortage of people. Court Official_1, since 2017.

Sometimes, what we have are barriers of time, of being few, computer applications do not collaborate, the Internet does not help. Registry Official, since 2003.

ICT software and hardware need a huge investment. Especially if the major changes and reforms consider the introduction and implementation of ICT tools.

[...] we still have different speeds, this has to do with hardware from the start, because people have different computers and, therefore, the speed with which you go to a police station, the fact that they have a computer with an operating system from 15 years ago, it takes 20 minutes to write a complaint, the citizen thinks that the service is a crap. Notary, since 2006.

And, finally, there is this constant demand in presenting excellent numbers or justify the bad ones:

They [the Minister of Internal Administration in Portugal] invented a situation that now exists every year, which is that the government assesses every crime. All the Police forces, everyone must fill papers, that is a huge joke, but they are forced to fill papers to understand the evolution. Of course, that's statistical data. All statistical data, for everything that can be done, can be manipulated. They always take a beauty treatment; nobody wants things to be too bad. But, of course, those numbers demonstrate some reality. Criminal Investigation Inspector / Interpol Inspector, since 1996 / 2006.

3.2. Citizen's critical points

This subsection has on its basis the information retrieved from the interviews conducted to judiciary system workers, as well as theoretical background. And it is now intention to analyze citizens' critical points regarding the judicial system modernization and the tension elements.

Despite recent years' evolution implemented in the Portuguese judicial system (Dias, Casaleiro, Lima, & Gomes, 2021; Dias & Gomes, 2018; Pedroso, Trincão, & Dias, 2003b), the fact is that some critical points regarding citizen's point of view when accessing Justice or dealing with judicial processes still remain.

The first one is the cost of Justice, meaning, the taxes and fees citizens must pay when starting a lawsuit or answering to one that was proposed against them. Adding to this, is the demand of having a lawyer in most of the judicial processes and pay their fees as well.

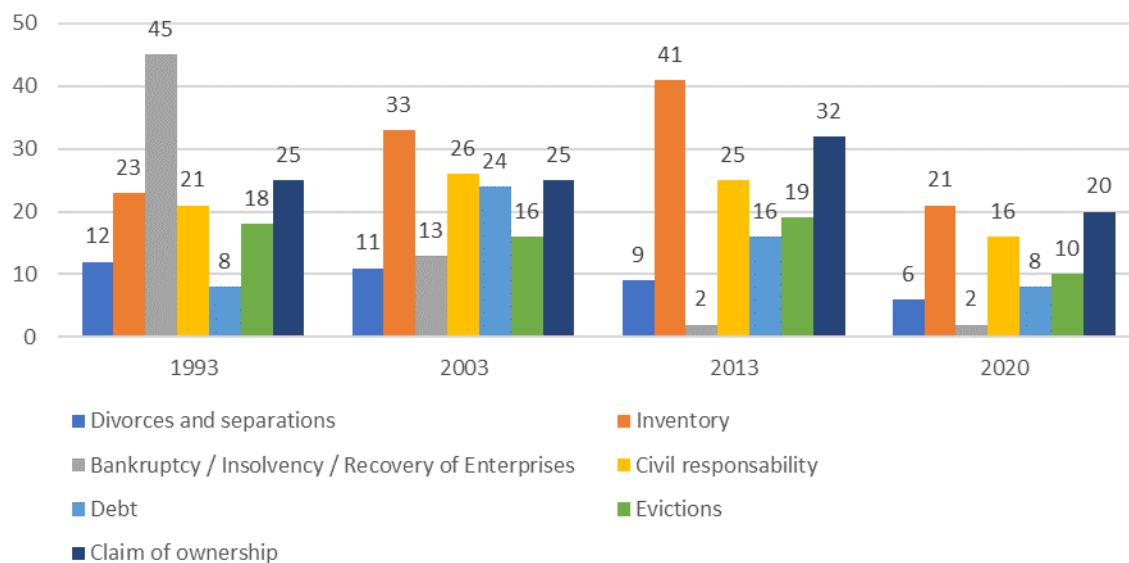
Access to Law and Courts is ruled in Law nr. 34/2004, July 29th. And there were measures applied which allowed the diminishing of those costs, such as exemption from payment of court fees

and other charges with the process and/or appointment and payment of lawyer compensation. However, a lot needs to be done if Governments' intention is to accomplish proximity and humanity.

Linked to this aspect is the language used in all the different acts and procedures. When it comes to citizens' understanding of what the official court documents mean, those are still very confusing, complex, and not easy to read and comprehend. If someone is not accompanied by a lawyer in the process, certainly he/she is going to experience some difficulties in understanding what is asked. Something that also happens when it comes to understanding the different stages of the judicial processes. Maybe that's the reason why the civil procedure code contains an article entitled "Principle of using simple and clear language".

Another critical point for citizens is the constant delays of Justice. This topic has been widely discussed by Gomes (2011) and has suffered a large evolution in the last few years. Graph 4 presents some of the most common judicial processes and their length in months.

Graph 4. Average length of some terminated civil proceedings in Courts of First Instance (months/mean)



Source: Pordata

Generally, the number of months citizens wait for a judicial process to be concluded have been decreasing. However, 20 months is still a long time for someone to have a claim of ownership decided. Or even 21 months for an inventory.

The delays in Justice is a topic that has been widely discussed in the academia, regarding Justice reforms (Lucy, 2020; Melcarne, Ramello, & Spruk, 2021; Susskind, 2019) and it is mainly considered as a true form of denying access to Justice.

Finally, the paper considers as an element of citizens' tension their need to develop digital literacy and infocommunication competences, to be able to keep up with all the digital transformations and the introduction of ICT in Justice. Infocommunication competences must be considered in its various forms: operational, informational and communicational (Borges, Bezerra, Diomondes, & Coutinho, 2013; Borges & Oliveira, 2011).

As one of the interviewees stated:

And then, essentially, the issue of training citizens' digital literacy, which is something that doesn't take a year or two and there are people who will always be excluded from the system. There are people who, for a variety of reasons, will never enter the system, that is, they will never have enough digital literacy to do these kinds of acts. Notary, since 2006.

4. Conciliation elements

This section discusses the conciliation elements between modernization and tradition in the Portuguese judicial system. Like the previous one, it is organized in two subsections: the first one focus on the judicial system workers' point of view, where the interviewees' discourses will be analyzed. And the second presents some critical points regarding citizens.

4.1. Judicial System workers' point of view

One of the main tension elements in reforms' implementation is the resistance those who are responsible for implementing them imposed to the process, whether by not knowing what the new demands are or because of the fear of not being up to the challenge. Either way, that resistance can cause delays in reforms' implementation and constraints along the process.

The introduction of ICT, digital platforms and documents in a system that has years of tradition in face-to-face moments, solemnities and in paper processes is a challenge. There were a lot of dimensions to be considered (already discussed), mainly regarding sensible data protection.

But when it comes to digital literacies and infocommunication competences, a factor in ICT introductions' favor was teamwork, how workers more comfortable in using ICT helped the ones more uncomfortable.

Although there is, yes, some resistance, I think there is already... Very important steps were taken in terms of dematerialization. The pandemic I think helped, but I think things are changing, I think there are also younger judges, who are already adept of these [digital] procedures, they no longer want so much paper or to see the cases in the cabinet. Older judges end up being resistant to this change and like to see people face to face. Even because one thing is to hear a witness in person, and another is to hear a witness by video call. Court Official_1, since 2017.

I think that the fact that there are many older people, turns out to be a greater difficulty and because we, Court Officials learn a lot on our own. Usually, when these new features are

introduced, no one really knows how they work, so we must learn by trying. And younger people, for example, this happened with WEBEX [the video calls software used in Courts], when it was introduced and we had to do the trial audience or conference, nobody knew how it worked. And there were several attempts that it didn't work, no one knew, the experts couldn't explain it to us. For the older colleagues was way more difficult, but we tried, found ways, and asked for help. Court Official_1, since 2017.

One aspect that was crucial for the implementation of some changes was the COVID-19 pandemic, mainly by bringing modernization to some traditional processes. The Decree Law Nr. 10-A/2020, March 13th introduced measures to reduce virus dissemination and some of them directly interfered with the judicial system. Namely, the suspension of judicial deadlines (the non-urgent ones) and of all the trial audiences, inquiries, conferences (once again, only the non-urgent ones). But also, the implementation of teleworking as a mandatory measure.

With telework there had to be ways of still controlling judicial deadlines (the ones that were not suspended), statistics and the continuity of work.

But with the pandemic, as there were entire sections at home or only one person of that section was in the Court, there was a more rigorous control, in the background. That control was to know if people were really working, if they came in at 9 am, if they left at 5 pm, how many acts were practiced during the day. That was more scrutinized in the pandemic, yes. Court Official_1, since 2017.

Modernization is a process (Smith, 2003) and to what the judicial system is concerned and when the variable ICT is introduced (with all the possibilities included) it is not easy to see an end for that process (think about the artificial intelligence (Susskind, 2019)). As shown in the first section, there are some major projects being implemented and some more being thought to modernize the judicial system. It is important that these projects consider not only modernization, but also, tradition. Maintain a high degree of certainty and security, that the judicial system requires, but introducing new ways of making the acts more agile. Interviewees manifest their opinions regarding this topic:

Today, information is in real time. Therefore, the paradigm has completely changed. And the same applies to other issues, to the commercial register, to the car register, it is allowed more consultation. On the other hand, the process of accessing information and the way we consult it, share it, make it available, etc., has become much faster. Therefore, the biggest changes were these, on the one hand, computerization, dematerialization, databases and, on the other hand, the immediacy on the part of citizens' accessing to documents and information. Notary, since 2006.

Well, I think there were several good ones [changes], especially because Simplex, in practice, has materialized and has been very useful. It was the citizen's card, everything in the computerized system is fabulous, if the system works. So, I think, in terms of changes, there have been quite a few positive ones that are happening. Registry Official, since 2003.

Again, one of the core points for the modernization processes to happen is people. They are the ones that carry the heritage of the traditional ways of doing things and are the ones who have the burden to make them work in these times of change. Human resources are key.

They are, they are, even the few that are here have embraced all the projects that have launched us in an almost stoic way, it's true. And, often, with... One has an online training, has a little training of 5 or 6 hours and then, in the end, the training is the practice. I think it also has a lot to do with human resources, as they are an obstacle, but the ones that exist are those with whom we manage to carry on and then it's like this, we complain, but we manage to keep walking. Registry Official, since 2003.

Considering all the elements which allow the conciliation between modernization and tradition in the judicial system, human resources are the most important. They are the ones who contribute for this sensible public policy – the judicial system – to evolve without losing its essence: the resolution of conflicts.

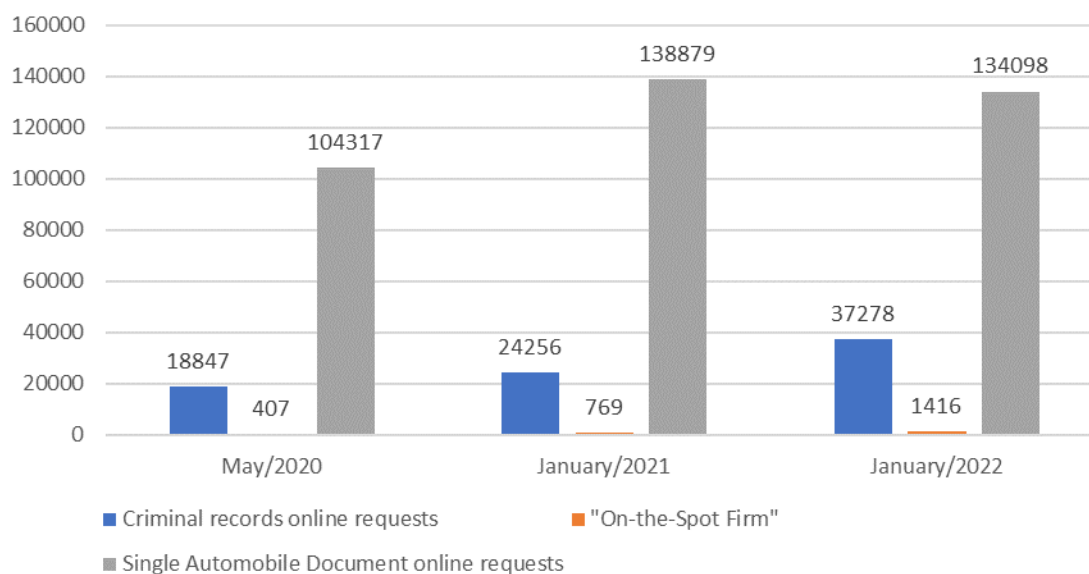
4.2. Citizen's critical points

As to what citizens is concerned, there are some conciliation aspects when it comes to combine modernization and tradition in the judicial system.

As seen before, the majority of the developed and implemented projects to modernize Justice have on its core technology and/or digital platforms. The primary goal was to contribute for the citizens' and businesses' ease of access to their personal and official documents (civil registries, for instance, such as the citizen card or different kinds of certificates). Paradigmatic of this goal is the Simplex project.

Having this in mind, citizens started to have at their disposal various types of services online, which provided speed and proximity. Graph 5 illustrates this information:

Graph 5. Simplex project measures



Source: <https://partilha.justica.gov.pt/>

As previously discussed, a lot is to be done regarding effective citizens' access to law and courts, especially considering the cost of Justice and the delays. However, most of the Closer Justice program measures already contributed and had true effects on how citizens contact and are contacted by the judicial system.

For example, in the executive judicial processes, language is clearer. As seen on graph 4, the length in months of most of the judicial processes have diminished. And Simplex measures also contributed for this access to law and courts, since it turned out easier to access personal and official documents, offering the possibility to request them online.

Moreover, the measures that are still ongoing or thought to be implemented in Closer Justice, Simplex and *Capitalizar* programs always considers the conciliation needed in modernization and tradition elements to be present in the judicial system.

5. Ideal model. Results' discussion

This section provides the results' discussion. Considering the interviews' analysis and the main results achieved, presented in the last two sections, the goal now is to achieve something close to an ideal model of how tradition and modernization can be combined in the judicial system. This approximation to an ideal model will be done, once again, by using excerpts from the interviews.

One of the main reforms implemented in Portuguese judicial system, in the last years, was the introduction of ICT and the processes' digitization. This is the dimension that immediately stands out from the interviewees' discourses, and with some thoughts for the future:

[...] of course, technology and the evolution of technology has revolutionized the way we all work and what will happen in the future and the evolution that we are going to have and that we have today, which we are starting to discuss, is how artificial intelligence is going to be included into all this and how decisions will be made through an artificial intelligence consultancy or through an artificial intelligence that becomes independent and can issue independent decisions without human intervention. Notary, since 2006.

Dematerializing processes is the work order that we have. Practically, only the essential documents are printed, we have already stopped printing a lot of things and we end up seeing that, perhaps, the future will be online. Even the trials, conferences and other events are done in WEBEX. Now, as things have normalized [after teleworking], we are back working in person, but there were habits that stayed. In this case, we continue to use WEBEX and to process everything more electronically than physically. Court Official_1, since 2017.

Inevitably, linked to this aspect are (or should be) digital literacy and infocommunication competences. In fact, that is a dimension that must be considered when reforms are implemented, whether to what the workers is concerned, but also regarding citizens. UNESCO defined media and information literacy (MIL) as

“an interrelated set of competencies that help people to maximize advantages and minimize harm in the new information, digital and communication landscapes. Media and information literacy covers competencies that enable people to critically and effectively engage with information, other forms of content, the institutions that facilitate information and diverse types of content, and the discerning use of digital technologies. Capacities in these areas are indispensable for all citizens regardless of their ages or backgrounds.”⁸

Therefore, digital literacy or media and information literacy include infocommunication competences, which are, in turn, completed by three dimensions:

- Operation competences: for example, operate computers and electronic artifacts; internet browsers; information search engines; communication mechanisms; resources for content production;
- Information competences: for example, understand a need for information; access information; evaluate information; link pieces of information; create content;
- Communication competences: for example, establish communication; create social bonds; build knowledge in collaboration; evaluate communication (Borges & Oliveira, 2011).

These three dimensions are key for an efficient use of ICT and especially if one is using them in a context of sensible data sharing and manipulating as it is characteristic of the judicial system.

However, as stated by Moreira (2017)

“The digital divide, despite being detected more than three decades ago, remains abysmal. Inequalities in access to the Net persist and become more complex, even more so because the simplistic view of the last centuries’ 90s, which placed the solution to the problem in

technological equipment and in the creation of access points, quickly proved to be insufficient, given the urgent need to increase digital literacy so that the handling of digital resources is accompanied by the reflexivity necessary for a critically use of technology. Otherwise, that is, if there are no measures to achieve real digital access for all, technological development itself, by creating digital inequalities, ends up generating even more social inequalities.” (Moreira, 2017, p. 71).

And one tends to agree with the author, if not only because of the lack of users' competences, but also justified by the difficulty in accessing updated computational hardware and software. Those are essential tools for work to be performed faster and for citizens to have access to all the potentialities ICT provide.

But those are also expensive tools, which translates into high costs for the Government (public expense) and for citizens (private expense). Furthermore, because ICT evolve in an accelerated rhythm, the need to update tools is constant, which translates into more expenses.

Therefore, an ideal model would imply judicial system services to be equipped with the latest generation of ICT hardware and software and access to constant updates. And, at the same time, citizens as well. Also, workers to be truly and completely trained to use those tools, as well as citizens.

Specialization was the second most mentioned reform to be in an ideal model. This was already perceived by some authors a few years ago: “Within the scope of the courts, it is necessary to rationalize and modernize acts and procedures and, eventually, create new functions related to specialization processes or the delegation of powers.” (Pedroso, Trincão, & Dias, 2003a, p. 317).

Courts already suffered some reorganization to include this specialization:

One of the elements which makes the modernization process easier, and a lot was also specialization. Both in the criminal part, and in the civil, administrative part. I think it is well implemented. Public prosecutor, since 1986.

In 2013, Law nr. 62/2013, August 26th published the judiciary system reorganization, and it included the specialized courts: family and minors, intellectual property, commercial, labor, etc. This provides an easy access to a court and a group of professionals who are only dedicated to processes of that nature, processing them faster than before.

However, a deeper degree of specialization is still needed, namely professional specialization, and to enlarge this to every district in the Country, as confirmed by the interviewees:

My personal perspective, it has to do with what I see, I understand that whoever should proceed with the prosecution or, at least, attend the prosecution should, in fact, be the coordinators of the Criminal Investigation Police, next to the Public Prosecution. Criminal Investigation Inspector / Interpol Inspector, since 1996 / 2006.

I think it was fundamental that the judges, when they go to CEJ [Judiciary Studies Center] and are later placed in the Courts as auditors of justice, that they are not directed to all types of

⁸ Available at <https://www.unesco.org/en/communication-information/media-information-literacy/about>.

processes. I think that even the judges should specialize to be able to decide better. Lawyer, since 1996.

In an ideal world, it was the registry offices just making registries and we would continue to conduct the acts we are supposed to, without such a competition even from the public sector. Notary, since 2018.

The third aspect of an ideal model for the judicial system (which combines multiple variables) would be effective access of citizens to Justice. And this must include comprehensible law language, low or accessible fee costs, access to ICT tools and training/knowledge to use them, closer infrastructures (when they are not accessible online) and ease of access to personal official documents.

In fact, the effective access to Justice and to the judicial system is such a demand and implies so many questions, that was proposed to be reflected by Anabela Pedroso (former Secretary of State of Justice between 2015 and 2019) in a way that it would itself imply a study just for its understanding:

[...] how is it that the justice system manages, despite this [the fast society evolution], to adapt itself enough to be effectively a response to access to Justice? It's not access to law, access to law is more linked to the normative component, to the legal aid component, that's not what I'm talking about. What I'm talking about is access to Justice, the ability that anyone, with a need, not understanding anything about Justice, doesn't need to know, nor does he/she need to know the big words, law language, but can know for sure that will be treated with equity, transparency and proximity [...]. Anabela Pedroso, Secretary of State of Justice between 2015 and 2019.

An ideal model would then, combine principles that are already defined for Public Administration – transparency, efficiency, humanity, and proximity – with principles also included in civil and penal procedure codes and in the Constitution of the Portuguese Republic – equality, good Justice administration, simplicity, etc. And extrapolate those principles in a dimension which turns them effective.

Conclusions

As seen, when it comes to combine tradition and modernization in the judicial system, three main areas highlight where this must happen: ICT introduction, human resources specialization and effective access to Justice. These three dimensions include multiple variables, such as digital literacy and infocomunication competences, training and increase employment numbers in the judicial system, diminish fee costs and simplify language and procedures.

In fact, those are still not variables that exist by themselves, they also integrate others simpler to be treated. And in this variables' consideration, having a perspective of bottom to top, tradition and modernization should be present in an equilibrium perception.

As always, I think virtue is in the middle. We shouldn't abolish tradition just because it's tradition, there are traditions that can still be valid and that [the judicial system] is the case, the old way how things were done, it was relatively well. Public Prosecutor, since 1986.

So, if the last 20 years can be described as transformative for the judicial system, namely, because of the attempted massification of its computerization and digitization, one can never forget that tradition is what molds the practices in that system, it is, somehow, what guarantees that citizens feel the judicial system as a "place" to find problems' resolution , with a high degree of certain that their workers are trustworthy as well as its process.

The paper tried to find an ideal model of a combination of traditional elements with modern ones. And as Jann & Wegrich (2006) suggested, the construction of an ideal model should consider some core stages:

“- Specification of program details (i.e., how and by which agencies/organizations should the program be executed? How should the law/program be interpreted?);

- Allocation of resources (i.e., how are budgets distributed? Which personnel will execute the program? Which units of an organization will be in charge for the execution?);

- Decisions (i.e., how will decisions of single cases be carried out?).” (Jann & Wegrich, 2006, p. 52).

Following those stages, including the variables mentioned before, listening to key agents and implementing pilots would help achieve the ideal model that works in a specific period of time, in a specific society, with its specific needs.

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Acknowledgements

The Research Project “The Two Faces of Janus in the Public Policies Modernization Process: Innovation and Tradition. The Portuguese Judicial System” is funded by FCT - Foundation for Science and Technology, under the reference 2020.07241.BD.

ANEXO 8

**TABELAS COMPLEMENTARES
AO ARTIGO 3**

Melro, A., Teles, F. & Oliveira, L. (2022). The path to public policies' reform definition. The case of the Portuguese judicial system. *Revista ACERTTE*, 2(10). Disponível em <https://acertte.org/index.php/acertte/article/view/101/82>.

Table 2. Portuguese Justice modernization process. Document analysis

Document	Document year	Period to which is concern	Types of Reforms	Theoretical/Philosophical reforms	Practical (Processes and procedures) reforms	Legal reforms	Structural reforms	Problems the reform aims to solve
I Constitutional Government Program	1976	1976-1978	Technocratic and managerial	Adjustment of the judicial system to Constitutional principles	Reform of the main Legislative Codes; Uniformization of Law	Family Law (divorce); Law of Obligations; Real Rights; Penal Law; Civil Law; Commercial Law; International Law	Courts organization and Judges statute reform; Judiciary Police; Registration and Notary services organization; full usage of informatic services; reorganization of Labor Courts	The repressive character of Penal Law; the discrimination of women's rights; minors rights; the individualization of Commercial Law; the bureaucratic character of Civil Law; the unprotection of private contractors; the divorce between States; lack of dignification and dynamization of Law professions; lack of inmates' participative rights and lack of an inmates' resocialization program (both for adults and minor inmates)
II Constitutional Government Program	1978	1978	Technocratic and managerial	Very similar to the previous one	Procedures' simplification and efficiency; Administrative litigation review; Labor courts transfer to Judicial Courts	Continuity of the work started in the previous period	Creation of Administrative Reform Minister; Courts and Registration and Notary reorganization; reorganization of the entire prison and penitentiary system and of the tutelary minors' services	Much focused on the efficiency and efficacy of the services
III Constitutional Government Program	1978	1978	Technocratic and managerial	Promotion of the access to rights: right to rights	Procedures' simplification and efficiency	Continuity of the work started in the first Constitutional Government	Greater relevance given to the Judiciary Police	Much focused on the efficiency and efficacy of the services
IV Constitutional Government Program	1978	1978-1979	Technocratic and managerial	Nothing to add different from the previous documents	Exchange with international organizations	Labor Law and the continuity of the work started previously	Continuity of the work started previously	Much focused on the efficiency and efficacy of the services

V Constitutional Government Program	1979	1979- 1980	More resources allocation	The goal is to find response to the exponential grow of the judicial system, namely, the number of litigious cases. Integration of European juridical systems. Resocialization of the inmates	Procedures' simplification and efficiency; continuity of the previous work	Continuity of the work started previously	Continuity of the work started previously	Much focused on the efficiency and efficacy of the services and on the inmates' resocialization
VI Constitutional Government Program	1980	1980- 1981	More resources allocation	Identification of a crisis situation, namely at the magistrature. Predominance of the educative scope in the juvenile delinquency; defense of an effective access to Justice	Creation of courts with specific competence; Creation of the Legislative Reform Cabinet	Simplification of civil and penal processes; implementation of Alternative Means of Dispute Resolution	Support of the Judiciary Studies Center; reorganization of the services in dependency of the Ministry; Creation of the Legislative Reform Cabinet	Lack of Magistrates; focused on the Magistrates problems and on the delays of justice; effective access to Justice
VII Constitutional Government Program	1981	1981	More resources allocation	Very similar to the previous one	Continuity of the previous work	Adjustment of the Legal Codes to the European Law; Reform of the Penal Law	Continuity of the work started previously with na European Law and Compared Law Cabinet	Much focused on the problems identified in the previous Constitutional Government
VIII Constitutional Government Program	1981	1981- 1983	Technocratic and managerial	Portuguese Law and system approximation to European Law and system; Modern and efficient services; Courts functioning crisis overcoming	Procedures' modernization and efficiency; Informatization	Legislative reform: Civil, Commercial, Penal and Procedural	All the structural reforms that the legislative reforms imply, at the level of the judiciary organization	Justice delays
IX Constitutional Government Program	1983	1983- 1985	More resources allocation	Strengthening the democratic authority of the Public Administration and protecting the legitimate rights and interests of citizens. Association of the legal reforms needs to the societal challenges: unemployment, familiar disaggregation, housing conditions... Justice delays	Continuity of the previous work	New Codes and legislative reforms	Judiciary Police reform; Constitutional Court reform	Societal problems and challenges; effective access to Justice

X Constitutional Government Program	1985	1985- 1987	Technocratic and managerial	Strengthening the State authority, effective justice reconciled with security, simplification and efficiency	Continuity of the previous work	New Codes and legislative reforms. Harmonization of the domestic legal system with the community ordering	Continuity of the work started previously	Much focused on the problems identified in the 1981 Constitutional Government
XI Constitutional Government Program	1987	1987- 1991	More resources allocation	Strengthening the democracy	Revision and examination of the Judiciary Police functions and attributes.	Revision of the Legal Codes. Concerns about economic crimes, data protection, new procedures in medicine	Continuity of the work started previously	Focused on the legislative production in the previous years and its reexamination
XII Constitutional Government Program	1991	1991- 1995	Technocratic and managerial	Human rights defense through the consistency of an equal access to Justice. Transparency, efficiency and cooperation.	Creation and/or transformation of Courts; Revision of the Judiciary Police functions; Informatization of Processes	All the revisions announced previously: Civil and Penal Codes, substantive and processual laws, Labor Law and Administrative Law.	Creation and/or transformation of Courts; Modernization and de- bureaucratization of processes	Social and civil reinsertion of inmates; slow and bureaucratic processes and procedures
XIII Constitutional Government Program	1995	1995- 1999	Innovation and technology	Need of an evaluation sector of the Justice in order to make it efficient and truly representative of citizens' rights.	De-bureaucratization of processes; increase human and material resources in the judicial system	Maintenance of the revisions previously mentioned.	Reform of the Justice administrative systems, in order to favour coordination and cooperation, informatization and access to information.	Slow, expensive, apart from the citizens and ineffective Justice.
XIV Constitutional Government Program	1999	1999- 2002	Innovation and technology	Promotion of a safety and security feeling	Continuity of the reforms started previously, but with a major focus on modernization and integration of technology	Maintenance of the revisions previously mentioned.	Intensify all the reforms started previously, with major interventions, at the level of the Judiciary Police, Courts, application of Justice, Arbitral Justice, Registrations, cooperation between departments, revision	Slow and delay Justice; heavy processes; huge number of processes; lack of cooperation.

							of prison system, etc.	
XV Constitutional Government Program	2002	2002- 2004	Innovation and technology	Efficient Justice as a true access to Justice.	More human resources and training of the human resources; connection of all the Justice sectors and departments in a wider network	Maintenance of the revisions previously mentioned.	Connection of all the Justice sectors and departments in a wider network; follow EU parameters	Slow and delay Justice; heavy processes; huge number of processes; lack of cooperation.
XVI Constitutional Government Program	2004	2004- 2005	Innovation and technology	Modernization, efficiency and effective access to Justice.	Informatization of processes, electronic government	Maintenance of the revisions previously mentioned.	The document is similar to the previous one.	The document is similar to the previous one.
XVII Constitutional Government Program	2005	2005- 2009	Innovation and technology	Justice and security systems serving citizenship. Justice as an important factor of the economic and social development.	Transform and modernize registrations with less steps and less documents, promote alternative resolution cases; technological procedures, rational management of Justice, International cooperation; promote Government responsibilities	Penal Code revision	Creation of the citizenship card, automobile document, buildings information, company on time	Heavy and bureaucratic processes and procedures, lack of informatic ways of doing things.
XVIII Constitutional Government Program	2009	2009- 2011	Innovation and technology	Justice perceived as a service (and not as power)	Simplification of processes; integration of new technologies: electronic process, videoconference hearings, recordings, etc.; training the magistrates.	Maintenance of the revisions previously mentioned.	Integration of new technologies in all stages of the judicial system; promote services that allow Justice to be closer to the citizens.	Lack of technology access, delay Justice facing a world crisis.

XIX Constitutional Government Program	2011	2011- 2015	Technocratic and managerial	Dignify Justice; promote its access.	Develop and implement legislation on personality rights; reorganization of courts;	Continuity of the process started previously	Continuity of the work started previously	Heavy and bureaucratic processes and procedures.
XX Constitutional Government Program	2015	2015	Technocratic and managerial	Proximity to the citizens, Justice more agile, transparent and efficient	Similar to the previous one and continuity of the work started there.	Administrative Code and Code of the Commercial Companies.	Continuity of the work started previously	The document follows the similar guidelines of the previous one.
XXI Constitutional Government Program	2015	2015- 2019	Innovation and technology	Modernization, simplification and rationalization of processes	Definition of goals and an incentive regime; development of informatic and technological tools and applications specifically to the justice management; Development and implementation of Simplex; Adjustment of civil judicial calendar to the civil one; cooperation between sectors; evaluation of the goals; electronic accessible information	All the legal reforms needed to transform justice in order to make it more electronic and accessible	New version of CITIUS; informatization of processes	Complex processes, guarantee access to information, provide understandable information to citizens,
XXII Constitutional Government Program	2019	2019- 2023	Innovation and technology	Justice at the service of economic and social development.	Continuity of the work started previously with a major focus on evaluation, scrutiny and transparency. Creation of data bases	Continuity of the process started previously	Continuity of the work started previously	The document is similar to the previous one.

Table 3. Portuguese Justice modernization process analysis. Martinelli's guidelines

Document	Period to which is concern	Unity of Analysis	Society characteristics	Factors/Mechanisms/ Processes	Factors/Mechanisms/ Processes	Direction	Sequence	Predicted and intentional occurrences	Unintended and unanticipated occurrences	Duration	Consequences	Results
I Constitutional Government Program	1976 - 1978	National	Obstacles	Endogenous	Single cause	Multidirectional	Progressive	End of a 41-year dictatorial regime. Modernization of agriculture and fisheries sector, development of the industrial sector. Modernization of educational programs and the development of science and technology (research)	Justice modernization was not predicted; however, it was felt as a need to answer the society changes	3-4 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, education, communications and transports sector
II Constitutional Government Program	1978	National	Obstacles	Endogenous	Single cause	Multidirectional	Continuous	Period of great political, economic and social instability. Modernization processes were the same as the previous period	Justice modernization was not predicted; however, it was felt as a need to answer the society changes	1-2 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, education, communications and transports sector
III Constitutional Government Program	1978	National	Obstacles	Endogenous	Single cause	Multidirectional	Progressive	Period of great political, economic and social instability. Modernization processes were the same as the previous period	Justice modernization was not predicted; however, it was felt as a need to answer the society changes	1-2 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, industrial, education, communications and transports sector

IV Constitutional Government Programme	1978 - 1979	National	Constraints	Endogenous	Single cause	Multidirectional	Continuous	Period of great political, economic and social instability. Modernization processes were the same as the previous period	Justice modernization was not predicted; however, it was felt as a need to answer the society changes	1-2 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, industrial, education, communications and transports sector
V Constitutional Government Program	1979 - 1980	National	Structural opportunities	Exogenous	Multi cause	Multidirectional	Progressive	Preparation of European integration. Modernization processes would have to accompany Europe demands.	Justice modernization was not predicted; however, it was felt as a need to answer the society changes	1-2 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, industrial, education, communications and transports sector
VI Constitutional Government Program	1980 - 1981	National	Structural opportunities	Endogenous	Multi cause	Multidirectional	Continuous	Preparation of European integration. Modernization processes would have to accompany Europe demands.	Justice modernization was not predicted; however, it was felt as a need to answer the society changes	1-2 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, industrial, education, communications and transports sector
VII Constitutional Government Program	1981	National	Obstacles	Endogenous	Multi cause	Multidirectional	Continuous	The title of the program was the modernization of society	Justice modernization was not predicted; however, it was felt as a need to answer the society changes	1-2 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, industrial, education, communications and transports sector
VIII Constitutional Government Program	1981 - 1983	National	Structural opportunities	Exogenous	Multi cause	Multidirectional	Continuous	Modernization associated with European integration	All the demands that the European integration includes, to standardize procedures and	1-2 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, industrial, education, communications and transports

									State relations			sector
IX Constitutional Government Program	1983 - 1985	National	Cultural opportunities	Endogenous	Multi cause	Multidirectional	Progressive	Modernization associated with European integration	All the demands that the European integration includes, to standardize procedures and State relations	1-2 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, industrial, education, communications and transports sector
X Constitutional Government Program	1985 - 1987	National	Cultural opportunities	Endogenous	Multi cause	Multidirectional	Progressive	Modernization associated with European integration	All the demands that the European integration includes, to standardize procedures and State relations	1-2 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, industrial, education, communications and transports sector
XI Constitutional Government Program	1987 - 1991	National	Cultural opportunities	Endogenous	Multi cause	Multidirectional	Progressive	Modernization associated with European integration	All the demands that the European integration includes, to standardize procedures and State relations	3-4 years	Justice modernization was not predicted; however, it was implicit.	Modernization of the agricultural, fishery, industrial, education, communications and transports sector
XII Constitutional Government Program	1991 - 1995	National	Structural opportunities	Endogenous	Multi cause	Multidirectional	Progressive	For the first time, Justice modernization was predicted at various levels: legislative, services such as registrations and notary, informatization of the services as a whole	All the demands that the European integration includes, to standardize procedures and State relations	3-4 years	Explicit starting point of the need to modernize Justice.	Modernization of the agricultural, fishery, industrial, education, communications, transports and tourism sector. Progressive modernization of the Justice

XIII Constitutional Government Program	1995 - 1999	National	Structural opportunities	Endogenous	Multi cause	Multidirectional	Progressive	Justice modernization and citizen data protection	All the demands that the European integration includes, to standardize procedures and State relations	3-4 years	The ones that result from an imposed modernization process, the so-called growth pains, such as data protection.	A clear attention to the citizen
XIV Constitutional Government Program	1999 - 2002	National	Structural opportunities	Endogenous	Multi cause	Multidirectional	Progressive	The document title is information society, which demonstrates the urgency of the existence of a network connection	All the demands that the European integration includes, to standardize procedures and State relations. Also the speed that network connection transforms relations and everything needs to happen	3-4 years	Dissemination of Internet connections	Internet connection was an exogenous imposition, which transformed Portuguese society since 1999. This had clear results and repercussions at a legislative and Justice level
XV Constitutional Government Program	2002 - 2004	National	Structural opportunities	Endogenous	Multi cause	Multidirectional	Progressive	Justice modernization to better serve citizens and companies.	All the demands that the European integration includes, to standardize procedures and State relations. Exogenous demands which transform internal services and relations	1-2 years	Dissemination of Internet connections	More agile, efficient, transparent and effective services

XVI Constitutional Government Program	2004 - 2005	National	Cultural opportunities	Endogenous	Multi cause	Multidirectional	Continuous	Justice modernization in order to better serve citizens and companies.	All the demands that the European integration includes, to standardize procedures and State relations. Exogenous demands which transform internal services and relations	1-2 years	Dissemination of Internet connections	More agile, efficient, transparent and effective services
XVII Constitutional Government Program	2005 - 2009	National	Constraints	Exogenous	Multi cause	Multidirectional	Progressive	Modernization associated with development and growth, and with technological infrastructures	The 2009 economic crisis which delayed the entire modernization processes and goals	3-4 years	The growth of private and public investments	Better financial results, and new investment possibilities for companies
XVIII Constitutional Government Program	2009 - 2011	National	Constraints	Exogenous	Multi cause	Multidirectional	Progressive	The document was defined considering the world economic crisis, combining the need to modernize with the urgency to provide a sense of stability and confidence	The real effects of the world crisis in economic development, which in the other hand had effects on Justice modernization	3-4 years	The decrease and mistrust on legal system	Decrease on investment
XIX Constitutional Government Program	2011 - 2015	National	Constraints	Exogenous	Multi cause	Multidirectional	Progressive	The document was defined considering the world economic crisis, combining the need to modernize with the urgency to provide a sense of stability and confidence	The real effects of the world crisis in economic development, which in the other hand had effects on Justice modernization and on Government	3-4 years	The decrease and mistrust on legal system	Decrease on investment

									stability			
XX Constitutional Government Program	2015	National	Obstacles	Endogenous	Multi cause	Multidirectional	Progressive	The document was defined considering the world economic crisis, combining the need to modernize with the urgency to provide a sense of stability and confidence	The real effects of the world crisis in economic development, which in the other hand had effects on Justice modernization and on Government stability	1-2 years	The decrease and mistrust on legal system	Decrease on investment
XXI Constitutional Government Program	2015 - 2019	National	Cultural opportunities	Endogenous	Multi cause	Multidirectional	Progressive	Simplification, dematerialization and modernize processes and procedures at various levels. Promote proximity between Justice and citizens	The ubiquitous technological developments	3-4 years	The growth of private and public investments and economic development	Public and private investments on technology at the various levels of Public Administration and of society sectors
XXII Constitutional Government Program	2019 - 2023	National	Cultural opportunities	Endogenous	Multi cause	Multidirectional	Continuous	The investment on technology in order to provide citizens access to services and a sense of normal	Pandemic crisis	3-4 years	The decrease of private investments, the increase of public investments, namely on health, Justice, economic and technology	Online services at the level of education, Justice, health and most of the Public Administration services