

## **Judicial reform: strengths and opportunities**

I was kindly invited to tell you about the strengths and opportunities that the Judicial Reform has brought.

It is for me a great honor to share with all present, here in Lisbon, how the Coimbra First Instance Court has dealt with this huge Judicial Reform.

In September 2014, a new Judicial Map was approved (Law of Organisation of the Judicial System) that reduced the number of first instance courts from 311 to 23 main courts (composed of 218 Central Sections, plus 290 Local Sections replacing former courts).

This reform pursued three main aims:

- specialisation of legal areas
- enlargement of the area covered by each main court
- a new model of court management.

Coimbra First Instance Court has an area of 3 947 km<sup>2</sup> and a resident population of 429 714 inhabitants.

It is composed of 9 Central Sections (all of them specialised: criminal, civil, criminal instruction, family and juvenile, labour, commerce and enforcement of sanctions), thirteen Local Sections (six of specialized jurisdiction - criminal and civil, seven of *general jurisdiction*) and four "nearby sections".

The Central Sections are located in the main cities (Coimbra and Figueira da Foz) and the Local Sections are located, in addition to Coimbra and Figueira da Foz, in 8 other cities.

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The new management model of the Court, now with a full specialisation of the Central Sections and a 46% specialisation in the Local Sections, was intended to provide a higher quality justice service.

However, a number of barriers had to be overcome:

- the geographical distance of people from the Court,

- lack of judicial officers,
- shortage of judges given the volume of proceedings pending in the Court,
- training needs for judicial officers in specialised jurisdictions,
- caseload,
- high procedural times.

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### **The lack of judges and judicial officers**

Being faced with these problems, the first challenge, and one of the first management measures implemented, was the complete digitisation of all proceedings.

The Portuguese ICT system, CITIUS, supports all Court activity. Through CITIUS, the judge can access the cases that are pending in a court jurisdiction and deliver the decisions electronically.

Procedural acts of judges, including the delivery of judicial decisions, are always carried out electronically via *Citius* which are then made available on the online applications and recorded by the judicial officers.

However, in 2014, it was only mandatory for lawyers to file applications and submit documents electronically in civil cases.

It was only in 2017 that this obligation was extended to all cases, but still exclusively applicable to judges, lawyers, prosecutors, enforcement agents and trustees in bankruptcy.

In these circumstances, many documents filled by the parties, the witnesses, the police, public authorities and any expert reports continued to be submitted to Court only by paper.

With the proven benefits of the total digitisation of the proceedings, it was decided in 2014 that the electronic files would also contain requests and information that were filed in Court, only on paper. From now on all the proceedings are totally in the ICT system.

To this end, the full digitisation of all paper-based applications was made compulsory through a Court management measure, previously accepted by all the judges. Ensuring full digitisation was the biggest challenge in 2014/2015, which required

monitoring of the work of judicial officers and identifying faults and improvements that were not visible beforehand.

Nowadays, according to recent laws, the judge is who decides whether or not to print the files in order to deliver the judgment.

Once the practice of the digitisation of all the proceedings was started and consolidated, it allowed for the mitigation of two of the core problems that had previously been flagged: the lack of bailiffs and the lack of judges in some of the Sections.

Accordingly, in result of the total digitisation of the proceedings, it was possible to achieve:

- a more effective use of human resources, including judges and judicial officers,
- the reduction of backlogs.

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#### **Working at a distance with the working electronic platform - Citius**

At first, the biggest problem laid in the backlogs, which could be overcome by the reassignment of cases to other judges.

It should be noted that the reassignment of cases is always proposed by the Court's President to the Judicial High Council, after having obtained the agreement of the judges. The cases are reallocated according to a previously defined criteria, which supersedes the previous random system of allocation of cases.

The reassignment of cases can take place if a judge falls ill or faces a particular complex case, but also when there is a backlog that must be addressed.

The reassignment of cases to another judge, in order to increase efficiency in the Court, was facilitated by the possibility of working remotely, even in another city, through accessing the whole proceeding on Citius. The judge would only have to move for a scheduled hearing.

This measure has been particularly successful within the enforcement cases, where the lack of judges was more evident.

In 2015, the reassignment of cases regarding backlogs occurred more than 8 times compared to 6 times in 2016 and 5 times in 2017.

The backlogs also occurred at the level of the judicial officers.

Often cases "stopped" at the Court Registry as a result of a tremendous workload coupled with a lack of judicial officers.

This situation was overcome with reinforcement measures, by creating virtual sections of cases, so-called "flying brigades". Whenever the number of cases assigned to a bailiff was excessive they were assigned to bailiffs of other Sections of the Court.

This organisational structure made the work of the bailiffs placed in the "nearby sections" more profitable since they originally had a very reduced workload. This was due to the fact that in the "nearby sections" there were no pending cases, only the hearings took place.

The reassignment of workload in these circumstances was only possible due to the full digitisation of all proceedings, where no printing is involved. I would like to highlight that the Enforcement Section will only print the proceedings when preliminary or final hearings take place.

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### **Monitoring system**

With a regular monitoring system it is also possible to guarantee efficiency and to relieve the workload of Judges and judicial officers.

However, the data doesn't allow us to know the real causes of why the proceedings have "stopped" at the Court Registry.

It was necessary to analyse the bailiffs' ability to respect the procedural time-limits and to find a solution when such response did not occur.

With that purpose, at our Court, we created some codes referring to the causes that led to the "stop" of proceedings at the Court Registry. Since then, all electronic proceedings include such annotations when applicable.

This type of monitoring has had a great and positive impact in reducing backlogs and also was only made possible due to the complete digitisation of the proceedings.

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### **"Follow up" other proceedings**

The global digitisation of the proceedings has also allowed judges from different Sections or jurisdictions to access proceedings pending on other Sections.

The electronic application "Follow up" allows the following of other proceedings, instead of requesting the necessary information by the traditional way (post or mail).

This tool plays an important role when a proceeding is awaiting a decision to be made in another case which is already pending in Court, when there is a relationship of inter-dependency between cases, when the accused is or has been charged in several different cases.

This electronic application is similar to a friend request on Facebook. It is quick to request access and quick to get an answer, without a formal application.

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The efficiency and effectiveness associated with the electronic processing of the proceedings was enhanced by the implementation of electronic communications (via email), in place of the traditional courier mail.

Furthermore, protocols were established with laboratories that perform medical examinations, resulting in less administrative effort and time for the judicial officers. This has meant that, in the current year of 2018, when the Court schedules the final hearing and summons witnesses or experts they are already aware that future communications with the Court can be made via email.

The aim is to simplify and streamline communications which provides obvious advantages, both in terms of the quality of the service provided and the increased capacity of bailiffs to perform other tasks.

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We also noticed that the duration of the processes increased due to difficulties in locating some of the parties and even the defendant.

The investigations that the judicial officer has to carry out often extend over a period of time that is more than reasonable.

For instance, situations where the Court ordered a father or mother to pay maintenance, but the one responsible for such payment had emigrated and their whereabouts could not be determined. Through this scenario, as in with similar examples, we have come to the realisation of the importance of being able to pinpoint the location of a parent through the use of social or professional networks or accessing publically available information. For this single purpose, a LinkedIn and

Facebook accounts were created, through which judicial officers can conduct searches.

Through the use of these social networks, the father's workplace was identified, who was then obliged to provide care. Similarly, the residence of a defendant who had been sentenced to several years in prison was located.

These are just two examples that show the importance of being able to use, whenever relevant, unconventional means that prove to be of great use.

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The use of Skype in hearings also contributes to speeding up the proceedings when the witnesses or one of the parents live abroad. Instead of scheduling a video conference, if there are no doubts about one's identity, the use of Skype should always be considered.

The wide use of Skype occurs, with great success, in the Family and Minor Sections.

I should also mention that the Civil Procedure Law was amended and, since 2017, it allows the use of all means of communication in order to collect evidence from a witness.

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### **Geographic Distances**

As previously mentioned, the current territorial design of the Judicial Court of the County of Coimbra, we can point out as a positive factor, the high coverage of specialized jurisdiction.

On the other hand, there are the added costs of traveling, particularly when the users are traveling by public transport.

The Central Sections, which have jurisdiction for the entire area of the district, are located in the main cities which are between 16 and 81 Kilometers from other smaller cities, with many of them having few public transport links. The distance to or from Coimbra can take about 2 hours.

The enlargement of the area covered by each Court and the specialisation of legal areas demanded measures that would alleviate the inconvenience inherent in traveling for the citizen, such as:

- Testimony of the witnesses through video conference in all of the jurisdictions;

- Judgments in nearby sections;
- Access to files and applications in any of the sections of the Court, even when they are pending in another Section.

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### **Training**

Judicial officers, in 2014, lacked training, especially those who were placed in a specialised court where they had no experience.

For this reason, training sessions were organised at the Commercial and Enforcement of Sanctions Sections, as they were the ones with the highest amount of cases and higher specialisation.

The training of bailiffs in the workplace is not detrimental to the functioning of the services. Moreover, it trains the bailiff to adapt to forthcoming difficulties and allows for more meaningful knowledge sharing.

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What's more, specific training for the use of the Portuguese ICT system Citius, was organised for judges at our Court.

The judges were using Citius without realising all its capabilities, making only basic use of it. Workshops were then held, for the Court's judges, where many Citius features were explored in order to simplify work and make it less time-consuming. The relevance of this type of training resided in the fact that it was facilitated by a judge, who understood the specific needs of the other colleagues.

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### **Caseload and high procedural times**

These, and other management measures that have been put in place over the past three and a half years, have aimed at increasing the quality of the justice service. However, not at the expense of a greater workload for judges and bailiffs, but through more efficient and flexible resource management and adoption of good practices.

In other words, do more and better but with less effort.

To that extent, the quantitative and qualitative objectives that have been set annually can be summarised in just one - providing a justice service that will respond in a timely manner to all cases, taking into account the more or less urgent nature of each.

We focused on the analysis of caseload and backlogs (in the first two years) and high procedural times (from then on).

The methodology has always been the same: regular monitoring, analysis in regular meetings with judges and bailiffs; and finally the promotion of good practices associated with the objectives that were set.

There were backlogs in almost all the new Sections of the Court, especially in those which had received cases from the extinct Courts.

Through management measures previously stated (i.e. full digitisation, remote working, reallocation of cases to other judges, virtual work teams for bailiffs, as well as monthly monitoring in the first two years alongside analysis meetings), it was possible to reduce the number of pending cases and backlogs.

I have to say that the backlogs had a significant impact at The Commerce and Enforcement Sections, in which the number of pending cases was very high.

At the beginning of 2015, 26,659 cases were pending in the Enforcement Section, a figure which, in January 2018, had already fallen to 10,749.

In this Section, a clearance rate of 167% was achieved in 2015, 246% in 2016 and 178% in 2017.

The number of pending cases decreased by 60% between January 2015 and January 2018.

The disposition time was of 745 days in 2015, 400 days in 2016 and 465 days in 2017; whilst the national average of the last quarter of 2017 was still 1056 days.

At the same time, in the Enforcement Section the total amount recovered was also monitored.

In 2015, the sum of totally and partially recovered was of 45,462,178.20 €, 68.239.596.90 € in 2016, and in 2017 it totaled 121.988.936.69 €.

This type of monitoring was very important on two basis.

Firstly, it represented a source of motivation for judges and bailiffs: it allowed us

to understand the importance of the work done by quantifying the amounts that were recovered.

And the results thus obtained constituted an important indicator for the country's economy, as it represents an important indicator for investment in a region.

Although the results obtained in the Enforcement Section had a lot of visibility, it is fair to point out that the reduction of pending cases happened in all of the Sections of the Court.

The high clearance rate in the first two years has now stabilized at around 100%.

On the other hand, the higher backlog rate caused a reduction in disposition time, as you can see in the chart.

Moreover, since 2015, we have been monitoring the procedural length of cases until the final decision.

Reducing the average length of cases was the ambition during these three years and was achieved with success.

Without disregarding the limitations of the average length of cases, it was understood that this analysis should continue to be monitored as it represents a vital indicator with special external importance.

But it should not be pursued as an objective.

The average length of cases analysed takes into account the excessive length of some of the cases as well as those in which the final decision is given in very short time.

For this reason, the goals for 2018 privileged the cases that have been pending in Court for the longest time.

In October 2017, we analysed the situation in terms of the procedure lengths for the different types of cases, for the last three years, in order to get an accurate picture of the Court's caseload.

Following that, the pending period for the different types of cases was extrapolated.

We were, therefore, in a position to choose Timeframe B, proposed by CEPEJ, as it was deemed as the timeframe that could realistically be pursued.

All the judges agreed with this diagnosis and with the proposed set target, even though it was not very widely understood, in my opinion.

They were not aware of the data regarding the pending cases not resolved by periods of times.

At first, a vast majority was of the opinion that the more demanding timeframe should have been adopted. It was only when presented with the opportunity to look at the table of the "case's pending period" that they accepted to adopt the proposed gradual solution - timeframe B, apart from the Criminal Instruction Section, where cases don't last for more than 3 months.

Even though we are only half way through the year, we can already underline that with this tool:

- the backlog achieved has much more visibility,
- we can list all the cases that are pending for more than 18 or 24 months and attribute them an urgent status,
- the judges can objectively look at the root causes of this problem (one of the most significant, in civil cases, being the long period of issue of expert evidence),
- we can effectively address some of these problems (e.g. celebrating protocols with the University of Coimbra).

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Before I conclude, I would like to state that the initial ambition and excitement, of using the Timeframes for setting the Court's annual objectives, has now decreased.

"Everyone is entitled to a fair and public hearing within a reasonable time" states the article 6 of the European Convention on Human Rights.

This is the main objective.

Now more than ever, we should pay attention to backlog. Although it has been greatly reduced, as long as there are still cases with lengths exceeding the reasonable time, the European Convention on Human Rights has not been respected.

The big reduction of pending cases that has occurred in Coimbra Court , in the last three and an half years, has recently lead the Ministry of Justice to the conclusion that it is possible to do the same with less human resources. To this extent, a cut of the

number of judges in our Court has been proposed for next year, which will compromise the achievement of the established goals.

Coimbra Court will suffer the largest cut compared to the other 22 Courts in Portugal. In fact, only two Courts are expected to have the number of judges reduced, whilst others actually expect an increase.

It is important to mention that most problems concerning high procedural times occur in civil cases, which don't usually appear in the media. Only criminal cases attract media attention.

On the other hand, we have no doubt that the level of demand is much higher in the civil jurisdiction, which is why it is not sustainable, as is happening in Portugal, to propose that judges of a Civil Section should have a higher workload than the judges of the Criminal Section.

Scheduling hearings between 1 and 3 months, maintaining a 100% clearance rate and recovering all backlogs regarding the settled timeframes was, and still is, a very demanding task, especially for civil court judges.

Quoting the Implementation Guide of European Timeframes for Judicial Proceedings, as adopted at the 28<sup>th</sup> plenary meeting of the CEPEJ, I will say that "It is important to underline that quantitative indicators and targets are just photos of the functioning of courts and of the desirable goals to be reached. Adequate courts' resources, effective policies, good procedural rules and practice, commitment, and concrete actions are needed to reach these goals."

The recent Court Management experience in Portugal, coupled with the very positive results presented by the Backlog and Clearance Rates, can create the illusion that the goals have already been achieved.

That isn't the case.

Despite the results that I have presented to you today, much remains to be done. And similarly to what has happened so far, it will only continue to be possible with adequate court resources and commitment.

So, I'll finish off by telling you that there is still a lot to be done.

Thank you for your attention.

Isabel Matos Namora  
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