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Veröffentlichungsversion / Published Version
Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:
Fernando, P. (2012). Intertwining Judicial Reforms and the Use of ICT in Courts: A Brief Description of the Portuguese Experience. *European Quarterly of Political Attitudes and Mentalities*, *8*(2), 7-20. https://nbn-resolving.org/urn:nbn:de:0168-ssoar-62442-3

European Quarterly of Political Attitudes and Mentalities EQPAM
Volume 8, No.2, April 2019
ISSN 2285 – 4916
ISSN-L 2285 - 4916

Intertwining Judicial Reforms and the Use of ICT in Courts: A Brief Description of the Portuguese Experience

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Date of submission: April 18th, 2019 *Date of acceptance: April 23rd, 2019*

Abstract

This paper, focusing on the Portuguese experience, analyzes changes on the legal framework and the governance requirements in the different stages of development and implementation of courts' ICT. To this end, the paper provides for a concise description of the Portuguese justice system and of the main challenges its organization and territorial division has faced in the last decades. Follows a description of the introduction of the two main courts' information systems in: CITIUS (for judicial courts) and SITAF(for administrative and tax courts). The paper then on focuses the recent measures adopted under the *Justiça + Próxima* plan, analyzing the main needs they intend to address and goals they expect to fulfill, in the attempt to understand if they will be able to introduce the new era of courts e-services that has been promised.

Keywords: eJustice; courts; innovation; dematerialization; transparency

1. Introduction

In Portugal, informatization of courts has been traditionally associated with the urge to improve courts performance, with the idea of speeding up proceedings, obtaining decisions in reasonable time, and improving efficiency (Machado, Silva, and Santos 2008; Pereira 2005; Santos 2005). Following the trends

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European Quarterly of Political Attitudes and Mentalities - EQPAM, Volume 8, No.2, April 2019, pp.7-20.

ISSN 2285 – 4916
ISSN–L 2285 – 4916

ISSN 2285 – 4916
ISSN-L 2285 - 4916

set by eGovernment diffusion in the public sector (Lourenço, Fernando, and Gomes 2017), Portuguese justice administration focused primarily on promoting the dematerialization of proceedings, offering online services to legal professionals, and supporting electronic communications between traditional actors of the judicial process. By introducing new automatisms and redistributing the work of each judicial actor, the Portuguese courts informatization induced significant changes in the routines of legal professionals (Fernando, Gomes, and Fernandes 2014). While this process brought technological, institutional, organizational and legal changes, the role of each player remained mainly the same. Traditional paper based communication and storage were substituted by new information and communication technologies (ICT). These were seen as tools to support core organizational and procedural reforms aiming to improve courts performance.

With time, this paradigm has shifted with the shift from an eGovernment model to an Open Government model[1]. Since ICT was used, mainly, as a tool to support ongoing reforms for the justice sector, its development and use has always been highly influenced by the dominant purposes and goals of the larger reform plan for the sector. Thus, following this theoretical shift, the introduction of innovation and use of ICT in the justice sector embraced new challenges. In addition to efficiency that remained a goal, ICT innovation aims also at the promotion of the fundamental principles of the Open Government, and in particular transparency (Alemanno and Stefan 2014; Jiménez 2014; Lourenço, Fernando, and Gomes 2017).

The current Portuguese reform plan in the justice sector – *Justiça + Próxima* (closer justice) – rests widely on the use of ICT as a facilitator to promote transparency. By promoting new ways of participation in the planning and of sharing responsibility for the ongoing judicial reform, it also fosters collaboration between judicial authorities and administrations. Following this approach, the development of new ICT solutions aspires to be redirected from the providers' perspective to the users' needs, adopting a people-centered approach.

The paper analyzes changes on legal framework and governance requirements for the different stages of implementation and development of ICT on the justice sector.

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[1] Open government is associated with the pursuit of three fundamental objectives: achieving transparency, promoting participation and fostering collaboration (Linders and Wilson 2011). In Europe, these principles have been included in the eGovernment Action Plan 2011-2015, aiming at "the transition from current eGovernment to a new generation of open, flexible and collaborative seamless eGovernment services" (European Commission 2010). For a brief delimitation of the concepts "eGovernment" and "Open Government", see (Lourenço, Fernando, and Gomes 2017). On the concept of open justice, see (Jiménez 2014; Gasco-Hernandez and Jimenez-Gomez 2018; Jimenez-Gomez 2017), and, particularly on the use of the concept in the context of European Union (EU) crossborder litigation, see (Velicogna et al. 2018).

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2. The Portuguese Justice System: A Synthesis

The Portuguese justice system is divided in two different jurisdictions[2]: the judicial courts and the administrative and tax courts, both of which are organized in three instances and have at the top of their hierarchy a separate Supreme Court. Both benefit from different information systems and have undertaken diverse paths during the reform of the justice sector.

Brief description of the recent reforms on the organization of judicial courts

On the top of the pyramid from judicial courts there is the Supreme Court of Justice, with national jurisdiction as the highest instance. It is followed by five Courts of Appeal (based in Coimbra, Évora, Guimarães, Lisboa and Oporto). The organization and the territorial division of the judicial courts, that remained basically untouched since the 19th century (Gomes 2007), has undergone significant changes over the last decade, mainly at the first instance courts' level. One of the first innovations of the organization of the first instance courts was the creation of a special registry, in 1999, specifically for dealing with payment order procedures, with exclusive jurisdiction in the cities of Lisbon and Oporto, for their respective territorial jurisdiction. In 2008, those two registries were substituted by a general registry, with national jurisdiction over payment order procedures, called "National Desk for Payment Order Procedures" *[Balcão Nacional de Injunções - BNI]*[3], which is today the general registry with exclusive national jurisdiction for that procedure (Fernando, Gomes, and Fernandes 2013). BNI only deals with uncontested payment order procedures. Whenever there is a statement of defense, the payment order procedure is distributed to the competent judicial court[4]. BNI was designed to serve as a fast-track lane to obtain an enforceable title in specific uncontested claims, thus relieving courts from *low intensity* disputes (Santos et al. 1996, 157). If the implementation of BNI was relatively smooth and generally accepted by the judicial sector and legal professionals, the wider transformation of the judicial map and territorial organization of courts took a more difficult path. Over the last years, two major reforms were introduced – a failed one that has not passed the pilot project phase and the one currently in place.

The first, failed, reform was introduced back in 2008, after a long debate and the publication of scientific studies (Santos and Gomes 2006), by means of Law n.º 52/2008, August 28. This reform emphasized specialization of courts, introduced a new territorial matrix, and a new model of court management, with the creation of a new figure: the court administrator. It entered into force on the 14th of April, 2009, in three jurisdictions, as a pilot experimental project: Alentejo Litoral, Grande Lisboa Noroeste and Baixo Vouga. Subsequent laws foresaw the gradual enforcement of the reform to other territories of the country[5], but the expansion of the reform never took place. By Decree-Law n.º 113-A/2011, November 29, the expansion of the judicial map reform was revoked. According to the preamble of that Decree-Law, "the Memorandum of Understanding, signed on 17 May, 2011, between the Portuguese State, the European Commission, the European Central Bank and the International Monetary Fund [commonly known as *Troika*], has accepted the need to install those two jurisdictions [Lisboa and Cova da Beira] until the end of

[2] To this building must be added the Constitutional Court (competent in matters of legal-constitutional nature), and the Court of Auditors (competent for the verification of the of public expenses' legality). Also arbitration courts (institutional or *ad hoc*) and justices of peace are part of the overall justice system.

[3] Ordinance 220-A/2008, March 4.

[4] Similarly, in 2013, a National Desk for Tenancy (BNA) [Balcão Nacional do Arrendamento] was created, with national jurisdiction over the special procedure for evictions. As happens with BNI, contested procedures are distributed to the competent judicial court.

[5] Law no. 3-B/2010, April 28, foresaw that the new model should be gradually applied to all territory until 1st September 2014. Decree-Law no. 74/2011, June 20 (rectified on the 19th of August, Rectification no. 27/2011) determined that the reform should apply to two new jurisdictions (Lisboa and Cova da Beira), but it never came into force.

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ISSN-L 2285 - 4916

2011 and entered such measure under point 7.4. Nonetheless, pursuant the first revision, dated 1st September 2011, such item was revoked, allowing a wider range of action to the Government in order to rethink the current system and carry out the appropriate reforms". The Ministry of Justice of the newly elected government[6] then announced a new reform of the judicial map, using a different matrix and a different management model.

That new reform of the judicial map entered into force on the 1st of September 2014, pursuant to Law n.º 62/2013, 26 August[7]. With this new reform, at the first instance, the national territory that was, until then (with the exception of the pilot experimental project mentioned) divided into 233 counties became divided into 23 judicial counties[8], which, as a rule, corresponds to the administrative districts. Each judicial county comprises multiple municipalities. Under the current judicial organization, the first instance judicial courts fall under two different categories:

- the county courts – one for each judicial county –, which are divided into central units (that can be composed of civil, enforcement, criminal, criminal preparatory enquiry, family and children, labor and commercial sections) and local units (that can be composed of civil, criminal and petty crime sections and proximity sections);
- the wider competence specialized courts, namely the intellectual property court, the competition, regulation and supervision court, the maritime court and the Central Court of Criminal Preparatory Enquiry (which exercise their jurisdiction throughout the territory) and the Supervisory Courts (with competence over a group of judicial counties).

As a rule, the central units of the county courts have competence over the entire territory of the judicial county or over a larger group of municipalities. The local units, on the other hand, as a rule, have competence over one or a small number of municipalities within the judicial county. Each unit is not an autonomous court, but sections of one of the 23 county courts.

The new judicial map in Portugal was, thus, designed under the Memorandum of Understanding signed with *Troika*, as a measure requested by the financial assistance program, and it embodied the framework provided by such institutions, focusing "less on citizens and more on responding to the needs of the economy more efficiently and, above all, less expensively. The latter premise, requiring cuts to the running costs of the judicial system, imposed court closures[9], concentration of services and fewer human resources, based on a new model of territorial organization that reduced citizens' rights of access to the courts" (Dias and Gomes 2018). If, on the one hand, specialization of courts was welcomed by most of the judicial actors, on the other, specialization of judges was not guaranteed (reducing the potential positive impacts of specialization of courts) and the excessive concentration and centralization of courts was under an intense critique.

[6] The Memorandum of Understanding was signed by the XVIII Constitutional Government (led by the Socialist Party) that resigned on the 23 March 2011 and remained at seat until the 21 June 2011, when the new government (the XIX Constitutional Government, led by the Social Democratic Party and the Democratic and Social Centre – People's Party), following elections, was appointed.

[7] This law has been amended 6 times: Law n.º 40-A/2016, December 22; Law n.º 94/2017, August 23; Organic Law n.º 4/2017, August 25; Law n.º 23/2018, June 5; Decree-Law n.º 110/2018, December 10; and Law 19/2019, February 19. The concrete structure and area of intervention of the each court within the judicial counties are governed by Decree-Law n.º 49/2014, of March 27, amended by Decree-Law n.º 86/2016, of December 27; Law 29/2019, February 19; and Decree-Law n.º 38/2019, March 18.

[8] Açores, Aveiro, Beja, Braga, Bragança, Castelo Branco, Coimbra, Évora, Faro, Guarda, Leiria, Lisboa, Lisboa Norte, Lisboa Oeste, Madeira, Portalegre, Porto, Porto Este, Santarém, Setúbal, Viana do Castelo, Vila Real and Viseu.

[9] The first version of the judicial reform closed 20 courts and converted 27 into local units (Dias and Gomes 2018)

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Over the last couple of years[10], some rearrangements have been made to reduce such negative impacts. At a first moment, in 2016, 20 previously extinct small courts were transformed into proximity sections (being able to host judicial trials); 7 new family and children sections were created; the competence on family and children matters was extended to 25 local sections; and the law made it mandatory for criminal trials before a single judge to be performed on the court of the place where the crime was committed even if in that place there is only a proximity section [11]. Later, in 2018, such obligation to perform trials on proximity sections was extended to civil case[12]. Most recently, specialization was further developed, and 2 previously extinct small courts were transformed into local units with civil and criminal competence[13].

3. Brief description of the organization of administrative and tax courts

The administrative and tax courts are, also, divided in three instances. At the highest level, there is the Supreme Administrative Court, with jurisdiction on the entire national territory. At an intermediate level there are the Central Administrative Courts (the Northern Central Administrative Court and the Southern Central Administrative Court). Finally, there are 15 first instance aggregated administrative and tax courts[14], and one (disaggregated) administrative court and one tax court (these last two both based in Lisbon).

The administrative and tax courts have undergone its major reform in 2002 and 2003, which entered into force on the 1st January 2004[15], and focused on a procedural revolution (mainly on the administrative procedure), reinforcing judicial powers, coupled with an organizational transformation, creating more and new courts with a completely different management model. Due to various circumstances, the new courts that emerged from the reform were overflown with an unexpected and undercalculated number of judicial cases which transformed those new courts, rather quickly, into seriously congested courts (Gomes and Fernando 2017). Although the reform was approved in 2002 and entered into force almost 2 years later, there was a lack of adequate preparation. The options taken on the transfer of pending cases to new courts revealed to be decisive in the congestion of courts. On the 1st January 2004, fiscal pending cases were all moved to the newly created courts[16] and administrative pending cases remained at the existing courts that were transformed into a liquidating section of the new courts, thus focusing, only, on finalizing such cases. Fiscal sections of the courts were immediately congested. On the other hand, adequate human resources

[10] Portugal exited the bailout programme in May 2014, during the XIX Constitutional Government. Following the elections of the 4th of October 2015 and after the coalition between the Social Democratic Party and the Democratic and Social Centre – People's Party, with relative majority in the Parliament, failed to obtain the necessary support of the Parliament to take office, the Socialist Party formed government (XXI Constitutional Government) in November 2015, based on parliamentary agreements with the Left Bloc, the Communist Party and the Environmentalist Party.

[11] Decree-Law 86/2016, December 27.

[12] Law 19/2019, February 19.

[13] Decree-Law 38/2019, March 18.

[14] Almada, Aveiro, Beja, Braga, Castelo Branco, Coimbra, Funchal, Leiria, Loulé, Mirandela, Penafiel, Ponta Delgada, Porto, Sintra and Viseu.

[15] The Statute of the Administrative and Fiscal Courts was approved by Law 13/2002, February 19 (according to the Rectifications 14/2002, March 20, and 18/2002, April 12), subsequently amended by Laws 4-A/2003, February 19, 107-D/2003, December 31, 1/2008, January 12, 2/2008, January 14, 26/2008, June 27, 52/2008, August 28, 59/2008, September 11, Decree-Law 166/2009, July 31, Laws 55-A/2010, December 31, 20/2012, May 14, Decree-Law 214-G/2015, October 2. The new organization of the administrative and fiscal courts entered into force following the publication of Ordinance 1418/2003, December 30, that installed the new courts.

[16] The previous fiscal courts of first instance were all extinguished.

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were undercalculated, the newly appointed judges suffered from insufficient and misdirected training[17], and the information system (that was a novelty for this jurisdiction) experienced serious constraints and malfunctioning[18]. Administrative and fiscal jurisdiction has since (and even before) been appointed as a seriously congested and lengthy jurisdiction.

Although some amendments and rearrangements have been attempted over the years, they have not been able to reverse its critical trend. During the present Constitutional Government (XXI), a new wave of reform of the administrative and fiscal jurisdiction has been put in motion. Following a diagnosis of the current situation (Gomes and Fernando 2017), working groups composed both by academics, legal professionals and members of the Ministry of Justice have developed a set of recommendations targeting the main bottlenecks of the jurisdiction. Human resources, mainly of judges and of the inspection, were strengthen[19]. Aiming at reducing backlog, special teams were created composed by judges whose sole purpose is to deal with cases pending final decision in administrative and tax courts. Also, special incentives (exempting parties from court fees) to the withdrawal of cases or to diverse to arbitration were implemented[20]. The possibility of a reduction of the court fee to whoever delivers a claim or counterclaim using a pre-approved form was foreseen[21]. The Council of Ministers also announced an amendment to the Statute of Administrative and Fiscal Courts, adopting the specialization of first instance courts, a new management model and a new model for the court support office, and an amendment to the procedural regimes of administrative and fiscal cases, aiming at its simplification (both still under review and not yet approved).

Other innovations follow under *Justiça + Próxima* plan and will be referred below.

4. The Information Systems of Judicial Courts and Administrative and Tax Courts

Judicial courts and administrative and tax courts are supported, as mentioned before, by two different information systems. Judicial courts are supported by CITIUS (a Latin word that means faster) and administrative and tax courts are supported by SITAF. Although both information systems have had a quite diverse implementation and development process, they are both characterized by a high level of formality and regulation. Both systems, at different paces and with different methodologies, have been designed to support the standardized procedure and practice.

5. A Light Introduction to the Background and History of CITIUS

[17] The effort for new training was placed mainly on administrative procedural law, since it was under such procedures that the reform amplified the traditional annulment jurisdiction of administrative courts, giving judges broader powers. It was expected that the greater demand would be on administrative cases. Nevertheless, due to miscalculation of pending fiscal cases (that were, in fact, much higher), right after the entering into force of the reform there was the need to reallocate judges to the fiscal sections. On the other hand, since the new administrative procedural law entered into force at the same time of the new courts, the newly appointed judges made all their practical training under the old law.

[18] On the implementation and development of the information system for administrative and fiscal courts, see 2.2.

[19] Ordinance 2011/2017, July 17, approved the new establishment plan for judges for the administrative and fiscal courts and Ordinance 288/2017, 28 September, approved the complementary establishment plan for judges for the administrative and fiscal courts. The establishment plan for administrative and fiscal court inspectors was also approved by means of Ordinance 289/2017, 28 September.

[20] Decree-Law n.º 81/2018, 15th October.

[21] Decree-Law n.º 86/2018, 29th October. One of the claims of administrative and fiscal judges is that the claims and counterclaims are excessively prolific. The creation of a pre-approved form aims at reducing the size of such claims or counterclaims, making cases more manageable. Such forms have not, however, been approved yet.

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In judicial courts, the use of information technologies came step by step. Although the use of information technologies for the treatment and completion of procedural acts was allowed in 1996, by an amendment to the Civil Procedural Code[22], the first demonstrations of such use only became visible from 1999, in two different fields. Firstly, inside courts and highly driven by court clerks, an information system, called GPCível (from "Gestão Processual Cível", that means *Civil Procedural Management*), designed to facilitate court clerk's work, was developed by a small group of court clerks. Secondly, at a different dimension, the procedural law began to open up to new possibilities to communicate with courts. In 2000, lawyers were allowed to send pleadings through a certified email address and obliged to present pleadings, appeal allegations and counter-allegations in digital format, in addition to a copy on paper[23]. Three years later, the obligation to present pleadings in digital format was revoked and it became optional, but a financial incentive to the use of email or other means of electronic transmission was given through a reduction to court fees[24]. In 2004, a new ordinance came to regulate the terms of the presentation of pleadings and writs of notice by email[25].

As the procedural regime evolved[26], so did the information system at courts. GPCível, then sponsored within the Directorate-General for the Administration of Justice – a Department under the Ministry of Justice that is responsible for supporting organizational and management policies in courts and for managing and training court clerks –, progressed to the birth of H@bilus – an information system used in both civil and criminal courts. With H@bilus, court clerks were able to make writs of notice directly in the platform, using pre-elaborated templates.

The same team that created and developed H@bilus was, then, involved in the development of CITIUS – the information system that allowed the progress of the dematerialization process in judicial courts – announced in 2007. By this time, the amendment of procedural law, foreseeing the electronic procedure, and the introduction of CITIUS came hand by hand. In 2006, the Civil Procedural Code was amended in order to host the electronic procedure[27]. In the following year, Ordinance 593/2007, May 14, introduced the platform CITIUS. The regulation of the electronic procedure in first instance judicial courts was published in 2008[28], stablishing, for example, the rules on the electronic presentation of pleadings, on electronic case assignment and on electronic issuing of writs of notice. It was applicable only civil procedures, and although its use became mandatory for lawyers from 2008, the use of the system only became mandatory in such proceedings for judges and public prosecutors from January 2009. With the amendment to the Civil Procedural Code in 2013, a new ordinance on the regulation of the electronic procedure was published, adapting to the new procedural model[29]. Nonetheless, the covered proceedings (the civil ones) and the fundamental regulation was left almost unchanged.

In 2014, during the implementation of the judicial map reform, CITIUS has collapsed. The system was not able to guarantee the adequate redistribution of the pending cases which resulted in a paralysis of

[22] Decree-Law n.º 180/96, September 25.
[23] Decree-Law n.º 183/2000, August 10.
[24] Decree-Law n.º 324/2003, December 27. For the evolution of financial incentives to the use of ICT, see (Fernando, Gomes, and Fernandes 2013).
[25] Ordinance 337-A/2004, March 31. This Ordinance was later revoked by Ordinance 642/2004, December, that established new terms for the use of email.
[26] For the evolution of the procedural regime until 2012, see (Fernando, Gomes, and Fernandes 2013).
[27] Law n.º 14/2006, April 26.
[28] Ordinance 114/2008, February 6, amended by Ordinance 457/2008, June 20, Ordinance n.º 1538/2008, December 30; Ordinance 195-A/2010, April 8; Ordinance 71/2010, June 8. It was later revoked by Ordinance 280/2013, August 26.
[29] Ordinance 280/2013, August 26.

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courts for nearly one and a half month. Also, since the statistical data relied widely on data collect from the system[30], for more than a year, it was not available. Over the following years, the main focus was to guarantee the stability of the system, addressing its technical fragilities. Only in 2017, under the *Justiça mais Próxima* plan, was the quest for dematerialization extended to criminal procedures, transgressions and child protection cases, and new functionalities were added to the system.

6. An Introduction to the Background and History of SITAF

SITAF is the application used by lawyers, judicial representatives of public bodies, judges, public prosecutors and court clerks in the administrative and tax jurisdiction that hosts electronic pleadings and was developed so that it could begin to be used at the same time as the major procedural and organization reform of the administrative jurisdiction in January 2004. The implementation of a dedicated information system was conceived as part of the overall reform, aiming at simplification, rationalization of means, and dematerialization. Prior to the entering into force of the reform, an Ordinance was published regulating the functioning of SITAF[31], foreseeing how pleadings and documents should be lodge electronically, and the access and the procedural digital protocol of administrative and tax cases. Pleadings and procedural documents could be sent electronically by email or uploaded at the web platform www.taf.mj.pt, as an alternative to the regular use of paper and regular mail. Until 2008, electronically, pleadings should be lodged in rich text format (.rtf) and documents filed electronically should be uploaded in tagged image file format (.tif). From 2008, pleadings and documents could be electronically filed in portable document format (.pdf). Whenever a party didn't present the pleading or the document electronically to the court, the court's registry should digitalize the paper copy and upload it to the information system. Judges and public prosecutors should directly write electronically their decisions and orders into the information system. All actors involved (lawyers, judges, public prosecutors and court clerks) would certify their acts through the apposition of an electronic signature. The architecture of the digital procedure was, thus, far more developed in the administrative and tax courts than that observed in judicial courts.

Although this platform was used to file and process electronic cases prior to CITIUS, it was widely underused, and identified as a cause for serious constraints. SITAF has generated distrust among users due to constant system crashes and to an alleged complexity on its use (Galvão 2009; Machado, Silva, and Santos 2008; Lourenço, Fernando, and Gomes 2017; Gomes and Fernando 2017). Since lawyers didn't trust the information system, often the same pleading would be sent in different formats to the court – uploaded in the platform, sent by email and sent by regular mail. This multiplication of copies of the same pleading resulted in added work to court registries and, often, in duplication of cases, since more than one case would be opened based on the different copies received (Gomes and Fernando 2017). Judges and public prosecutors would refrain from using the platform due to its often crashes and to the added work it represented when compared with a paper-based routine[32]. For example, to electronically sign a ruling or an order, a judge must make seven different clicks. Court clerks didn't recognize advantages to the use of the information system, highlighting its slowness and frequent crashes, the inadequacy of the templates to the

[30] For the evolution of the statistical data collection on the justice sector, see (Fernando 2017).
[31] Ordinance n.º 1417/2003, December 30, rectified by declaration of rectification n.º 17/2004, Febrary 2, and amended by Ordinance 114/2008, February 6. It was revoked by Ordinance n.º 380/2017, December 19.
[32] On a newspaper article, a judge is quoted describing the seven necessary steps to electronically sign a ruling or an order and stating that it is quicker to sign it manually, on paper (Público. 22nd April 2019. "São necessários sete cliques para assinar digitalmente uma sentença. https://www.publico.pt/2019/04/22/sociedade/noticia/sao-necessarios-sete-cliques-assinar-digitalmente-sentenca-1869958, accessed in 22 April 2019.

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various kinds of cases, the absence of an alarm system that would allow the control of deadlines, inter alia (Inspeção-Geral dos Serviços de Justiça 2009). In 2013 a new architecture of the system was designed (Inspeção-Geral dos Serviços de Justiça 2013), but it was only from 2017 onwards that innovations became visible and SITAF gained new noticeable functions.

7. New Trends and Challenges: The *Justiça + Próxima* Plan

In March 2016, the Ministry of Justice of the XXI Constitutional Portuguese Government launched the *Justiça + Próxima* Plan – an action plan aiming to promote the transformation of justice, empowered by digital, based on four pillars: efficiency; innovation; proximity; and humanization. The plan was designed to be flexible and open to external inputs, envisioning the transformation into an "agile, transparent, human and closer to citizens" justice[33]. The first version of the plan contemplated 120 different measures covering all areas of the justice sector (not only courts), benefiting from the needs' assessment carried out by the Ministry of Justice, and also by contributions of the different traditional stakeholders of the justice sector. Moreover, the ministry made available for citizens the possibility to suggest, through a web portal[34], new initiatives and measures to be included into the action plan. In December 2018, the action plan incorporated 150 measures.

The further developments of the information systems of courts (CITIUS and SITAF) and the new functionalities they provided can be separated, according to their goals, in three different categories: the ones aiming at dematerialization; the ones aiming at transparency; and the ones aiming at the automation of tasks. In the following pages, some of the most relevant initiatives that follow under each of the selected categories will be described.

Still the quest for dematerialization or the beginning of a new era?

Although in first instance judicial courts, for civil procedures, one could say there was an almost fully electronic procedure from 2009, both in other types of procedures (for example, criminal cases or cases that were filed in administrative and tax courts) and in higher courts, procedure was still highly based on paper.

Up from 1st July 2017, the electronic procedure, in first instance judicial courts, became applicable also to criminal cases (as of an accusation is brought to a judge for trial), transgressions (as of they are brought before a judge) and child protection cases (as soon as it is presented to a judge)[35]. Nevertheless, electronic writs of notice to lawyers was only possible in 2018, after an amendment of the Criminal Procedure Code[36]. Answering to an old demand made by lawyers, the maximum size of a plea or document to be lodged under a single act to the system was increased from 3MB to 10 MB[37].

The electronic procedure became applicable to appellate judicial courts on the 9th October 2018 and to the Supreme Court of Justice on 11th December 2018[38]. Nonetheless, judges from higher courts are not obliged to write their decisions and rulings electronically. Whenever the judge from a higher court chooses to write their rulings on paper, the registry is obliged to digitalize it, upload it to the system, and, if that is the case, to electronically issue the competent writ of notice to the lawyers representing the parties.

[33] https://justicamaisproxima.mj.pt/, accessed in 10th April 2019.
[34] https://justicamaisproxima.mj.pt/index.php/sugerir-ideias-para-a-justica.
[35] Ordinance 170/2017, May 25.
[36] Law 1/2018, January 29.
[37] Ordinance 170/2017, May 25.
[38] Ordinance 267/2018, September 20.

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The development of the electronic procedure in administrative and tax courts was, finally, initiated with the publication of Ordinance 380/2017, 19th of December, that entered into force in the 4th January of 2018. It, finally imposed a fully dematerialization of the procedure, making it mandatory for lawyers and other legal representatives of the public bodies to file pleas and documents electronically through a web portal (www.taf.mj.pt) – the access point to SITAF. The pleas and documents are electronically signed and must be lodged at a portable document format (.pdf). Judges and public prosecutors, at the first instance courts, must write their decisions, rulings or pleas electronically. Also writs of notices are now made electronically. In May 2018, the electronic procedure was extended to the Central Administrative Courts and in September 2018, to the Administrative Supreme Court. Nonetheless, as for the higher judicial courts, judges from the Central Administrative Courts and from the Administrative Supreme Court are not obliged to write directly in the system.

By the end of 2018, a new interface of CITIUS and SITAF for judges was implemented as a pilot project at two different courts – at the judicial court of Évora and at the administrative and tax court of Sintra. This new interface, still at a testing phase, has the possibility to introduce a new era of the use of ICT at courts in Portugal. It allows for judges to search contents inside the documents, using optical character recognition, and to prepare and annotate case files. The system was designed with the goal to leave open the possibility to, in the future, incorporate artificial intelligence tools that could support the judicial work.

8. Automation of Tasks

Some improvement measures of CITIUS and SITAF adopted under *Justiça + Próxima* Plan aimed at increasing the automation of court clerks' tasks. From July 2017, parties are exempt from sending to court proof of payment of the court fees, since it becomes automatically validated by the indication of a specific code (Documento Único de Cobrança). Court clerks, thus, no longer have to verify and introduce the conformity of the payment of the court fee.

Another example of the investment in the automation of tasks, adding new functionalities to CITIUS and SITAF, was the implementation of the electronic judicial certificate[39]. Lawyers and other legal representatives can request the issuing of an electronic certificate through CITIUS or SITAF, and when no prior judicial decision is in order under the competent law and the information is available at the information system, it can be automatically issued, thus reducing the workload of court clerks[40].

9. Improving Transparency and Accessibility

CITIUS an SITAF were designed to meet the needs of legal professionals. Thus, they were not focused on providing transparency to the system (Lourenço, Fernando, and Gomes 2017). Under the *Justiça + Próxima* plan, efforts have been made to provide for further accessibility of court cases to citizens and wider transparency. Ordinance n.º 170/2017, May 27, implemented the possibility for the parties in a proceeding to electronically consult their enforcement cases. Such possibility was extended, by means of Ordinance 267/2018, September 20, to all proceedings pending on judicial and administrative and fiscal courts, except those which are subjected to some kind of limitation of free access by the parties provided

[39] Ordinance 209/2017, July 13, amended by Ordinance 267/2018, September 20.
[40] The issuance of an electronic judicial certificate is also available online for citizens (https://justica.gov.pt/Servicos/Pedir-certidao-judicial-eletronica).

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by law. The consultation of the judicial case can be made through a web portal (https://tribunais.org.pt/Os-meus-processos), using the Citizen's Card or the Digital Mobile Key.

Ordinance 267/2018, September 20, also, foresees for the future implementation of the possibility of citizens that demonstrate a lawful interest to consult pending cases in which they are not parties[41].

Transparency was also sought under the improvement of the language used on writs of notice sent to citizens and companies by the National Desk for Payment Order Procedures. Since it was considered too complex and difficult to understand, new templates were conceived in clear language.

10. Concluding Remarks

The paper explored how, the courts' informatization process in Portugal was initially designed and developed to address legal professionals' needs. It was designed to facilitate both the work of legal professionals and the communication between judicial actors. The development of courts' ICT systems aimed, almost exclusively, at improving the efficiency at courts, saving time and reducing the workload, mainly, of court clerks (Fernando, Gomes, and Fernandes 2014; Lourenço, Fernando, and Gomes 2017).

Although the measures introduced under *Justiça + Próxima* plan still continued to address these needs, they also set two new trends (and challenges) that can be seen as the seed for a major transformation on the use of ICT in the justice sector. On the one hand, these measures have widely extended the previous trend of dematerialization, implementing the electronic procedure for all procedures and at all courts. If the achievements in this area are substantial, with the spreading the electronic procedure almost to its full extent, they can still be seen as a continuity of the previous development.

On the other hand, the *Justiça + Próxima* measures, and especially the intents foreseen for the new interface of CITIUS and SITAF for judges, can be seen as the beginning of the implementation of artificial intelligence tools at courts. This shifts the focus from dematerialization to the possibility of technology offering new added value to judicial work.

The measures also support the value of transparency and accessibility, by making judicial cases more accessible for citizens (parties) through the online consultation and request of judicial electronic certificate. CITIUS and SITAF have, thus, opened up to citizens, although in a unilateral way. Apart from the request of judicial electronic certificate, citizens cannot communicate with courts electronically. Besides, with the still highly rhetorical language used in court cases and with the strong intermediation tradition of the Portuguese judicial system, it is doubtful to which extent online accessibility to court cases provides actual knowledge of the state of the court case.

One of the main challenges to overcome, that shall be decisive for the success of the development of ICT in courts, is the ability to restore trust of the different stakeholders in the functioning of the information systems, after the 2014 CITIUS crash and the frequent failures and limitations of SITAF. Such issue has been addressed, mainly, by involving stakeholders in the reform plan, making them part of the transformation process. As mentioned, stakeholders have been involved in the needs' assessment made prior to the launching of the reform plan and new ideas from all stakeholders can be delivered and incorporated in the plan. On the other hand, representatives of the stakeholders have been involved in the actual implementation of some of the measures. The new interface for judges is a clear example of this implementation methodology, piloting the innovation in selected courts in order to monitor and evaluate the improvement. The results of such methodology are still to be seen and it will depend on the adequate functioning of the information systems.

[41] This measure was supposed to enter into force in the 2nd April 2019, but it was postponed to 11th September 2019.

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ISSN 2285 – 4916
ISSN-L 2285 - 4916