

He was going to be a judge, but he realised that it was difficult for him to embody the impartiality that a magistrate should have. He discovered that advocating for one of the parties to the end fitted more with his character, and that meant going to trial and winning it, and that is where he has already been recognised as one of Portugal's most prestigious and, more importantly, most promising young professionals.

Tiago Geraldo, managing associate at Morais Leitão cannot avoid taking sides in a debate, and perhaps that is why this interview is loaded with bold, but always meticulously reasoned opinions.

by antonio jiménez



TAKING A STAND



You are a renowned Litigation lawyer. What do you find most exciting in this area?

I started Law school wanting to become a judge. Still, I changed my mind in the first years due to a (quite obvious) profile and personal suitability reasons: I have always found it hard not to take sides in a debate quickly, and to refrain from strongly and audibly defend the reasons for that side. I derive the enthusiasm of being a Litigation lawyer mainly from being able and allowed to actively and vocally take a stance and verbalising it, helping to show the right way, helping to do justice. I have always felt there is a certain courage in performing that job. And a sign of courage that is worthy, and dignifies those who undertake it, even against all odds. Practising mostly in Criminal Litigation, as I do, adds some other perks, the most fundamental being that you are not only discussing business nor property nor money; you deal with people's life, their reputation, their freedom. The stakes are high. That is, of course, stressful and demanding, but it is also –at least in some cases– deeply meaningful and rewarding.

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As a young lawyer, you have indeed met several lawyers more experienced to work with and to work against. What were the things that you have learned from this contact?

I have the pleasure and honour of having worked for over 12 years with colleagues at Morais Leitão. They have always been personal references in the attitude, technical and strategic vital aspects of the profession. I owe them much for showing me the compass of what is and should be a complete Litigation lawyer, which I now understand to be basically about three things: commitment, brains and nerve. Learning by example, inside and outside the firm, is crucial for any young lawyer. I honestly don't think a Litigation lawyer may improve or progress in confined study or practice, disconnected from the world and its peers. Young lawyers only move forward by gaining more and more experience and fibre. They learn from older lawyers on dealing with clients, preparing a case, outlining a strategy and following it, managing the unexpected, the unforeseen, and also how to respond to errors and, perhaps even more significantly, how to learn from them.

Along with the previous question. What are the main advantages of a young

lawyer in comparison with a more expert one? What is the significant contribution of the young lawyers in the profession?

There is no way to run from it: experience is paramount in being a lawyer and clients are fully aware of this, especially in the Litigation field and even more within Criminal Litigation. Having said that, profile and personal characteristics always matter regardless of age, and you can see very quickly, sometimes with a small conversation only, who among the new trainees have the stamina and the skills required to make it in this profession. And, of course, you learn a lot with younger lawyers: when they are good and committed, as there are plenty, they have eager, willingness to show off, a less formatted way of thinking, refreshing legal knowledge and that gleam in the eye that is both inspiring and motivational for the team.

You are an expert in Criminal Law, but you are increasing your expertise in Regulatory, Economics and Finance. One could say you are becoming an expert in White-Collar Crime, an area very exposed to the media. Do you think its importance is overrated because of this exposure?

The Criminal cases will always stand out as the most serious and sensitive in the legal system,

but the classic sense of a single, concentrated Criminal system is outdated. In addition to Criminal offences, which are growing in number, complexity and the severity of its penalties, there is an even more exponential growth in the field of regulatory infractions—accompanied by the set of associated punitive mechanisms, such as fit & proper tests held by regulatory authorities. In a regulated market economy context, and in a way as a response to past financial scandals and the resulting social perception, the next regulation trends,

as I see them, will evolve more and more towards the perspective of sanctioning and accountability. Due to the profile and socioeconomic status of the corporations and people commonly targeted in this type of proceedings (whose exposure and reputational consequences are at times almost equivalent to high profile White-Collar cases), media coverage is as inevitable as it is problematic. A basic example: how can you say there is a sufficient presumption of innocence when in the investigation stage, you see someone's name in the

About Tiago Geraldo

Tiago Geraldo, now 35, joined Moraes Leitão in 2008. He is a managing associate in the Criminal and Compliance department and co-head of the firm's Innovative Committee. Tiago focuses his practice on Criminal litigation, mainly White-Collar and Corporate defence, where he has substantial experience in representing companies and individuals, both in and out of court. He has been actively engaged as well in some relevant Regulatory investigations and disputes in a variety of sectors such as Energy, Banking, Competition, Capital Markets, Telecommunications and Media, also advising clients on Compliance and Training programmes. Tiago has strong ties with some of the major clients of the firm, acting as their contact person and leading counsel in numerous and prominent cases. On the academic circuit, Tiago Geraldo teaches Criminal Law at the Universidade de Lisboa School of Law. He is author of several papers and opinion columns, besides lecturing in seminars and conferences, always on topics surrounding Criminal and Regulatory justice. 



CLAUDIA FERNÁNDEZ LÓPEZ-AREAL

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5

offices spread over
2 continents
(Lisbon, Oporto, Funchal,
Luanda and Maputo)

+400

Employees

+250

Lawyers

+50

Members

15

Areas of practice

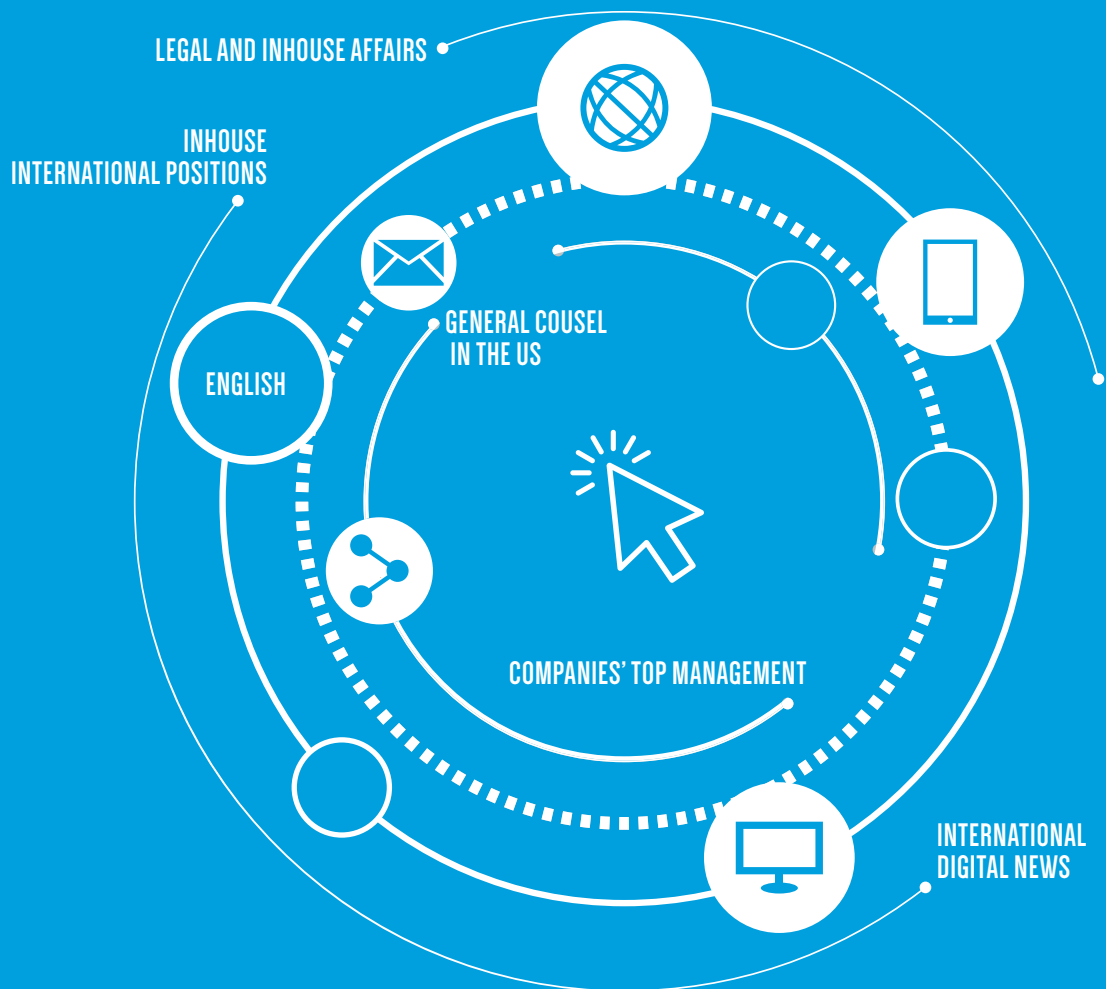
€64.1

Million in revenue



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headlines as almost already convicted? There is no point in trying to find miraculous solutions, though, because this exposure exists, it's somewhat natural and will not disappear. The only viable answer, as long as the current context of public opinion and media appetite for this kind of cases remains, is giving conditions for lawyers to intervene in the public sphere in defence of their clients, which would require some law amendments and an even greater reform of mentalities.

The Bar Association has just approved this summer a new regulation on money laundering which imposes as a field for the Compliance and Regulatory experts to watch and prosecute these crimes. Might this recent measure change radically this kind of offences and the way lawyers deal with them? Is this new regulation putting the prosecuting of these crimes out of the courts as some lawyers pointed?

The regulation came to operationalise what was already provided in the Law and the general expectation before its approval was that it would help improve the levels of AML compliance by lawyers and law firms, besides detailing some relevant "how-to" aspects. The regulation contains, however,

some changes compared to the initial draft, such as, in practical terms, removing the president of the Bar Association as a filtering and control body. That raises relevant doubts about its compatibility with the status and specificity of the lawyer profession in the safeguard of the Rule of Law and its inherent guarantees and prerogatives. As for the nature and model of investigating and prosecuting money laundering, I would not anticipate any material changes, beyond, perhaps, a more active preventive role from lawyers, since the legal regime now embodied in this regulation commits lawyers to channel suspicions of money laundering practices to the Bar Association, being the latter bound to forward them to the criminal investigation authorities.

What is the vision you have about the profession in the future? Which ones are the areas that might develop stronger and what things might change in the next years?

One thing I am sure of: even with all the hype and fuzz about robotics and the expansion of artificial intelligence, the lawyer will continue to be necessary, and I believe more than ever, in that essential function in a state governed by the Rule of Law which is to challenge the use of

the government's most intrusive powers, especially in that *ultima ratio* area which is Criminal Law. Regarding new areas, there is no risk of being wrong when anticipating that in today's digital era, cybercrime matters will be increasingly relevant, as these pandemic times have shown. On another level, and although it is a trend that had already begun some years ago, I would say that individual criminal liability linked to the exercise of political offices will continue to be an expanding area. For reasons that are not so much legal as, if you like, they are sociological and of a sort of social balancing nature.

You are, besides a lawyer, a teacher. Your commitment to education and the academic environment is something remarkable in your trajectory. What teaching keeps alive in the soul of the lawyer once he begins to litigate and face the day to day routine of the practice?

I tell my students all the time that those who only know about Law know nothing about Law. This idea can be replicated for all areas: those who only know in Law practice don't know anything about being a lawyer, and the same goes for university assistants and professors, architects, filmmakers, musicians, etc. The way I see it, one's profession should be seen and cultivated as a craft; not as a divisive wall from the rest of the world or a push towards a dome closed to other areas, to different sensibilities, to other minds. Being curious and being open to all the worlds out there is vital in many areas, but in a lawyer's activity in a very palpable way, due to the complex combination of characteristics (technical, logical, strategic, cultural,

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emotional, etc.) and different perspectives that a good lawyer should encompass. I teach by pleasure and for that exact reason: teaching is a different world, and in that other world –in the way you talk, in the people you know, to some extent even in the form of thinking– I keep up to date, and in contact with innovative angles through intelligent and unformatted students and their often challenging and disturbing questions. Teaching also helps to neutralise and balance the sometimes excessive cynicism and stress of the legal profession. And that with an almost daily gratification. The greatest thing of all in lecturing is to realise throughout the classes and semesters and years that to a certain extent, you are changing the lives of other people.

You are also a very active writer. The publications that appear in your CV exceed the more common dedication to the writing of articles and books. What is the main advantage of thinking about the Law from the perspective of writing?

Writing helps you think and organise and test ideas. It is a self-inquisitive intellectual journey, a debate of many hours

with yourself. No good legal idea can or should survive without being tested, in practice or on the paper, and writing helps to put things in perspective and challenge different perspectives more thoroughly. After having been confronted on several times –as all lawyers are– with the fact that in practice legal theory is often quite different, I write mostly on legal issues that have some connection with my professional background and experience as a lawyer. Not for contempt neither for scholar knowledge, but simply for the reason that I believe that Law does not exist nor should be seen as a sort of archaeological monument. It is a valid instrument to solve problems and cases, and that legal writing should also pursue that same primary aim.

One of the phenomenon related to the COVID is the rising of cybercrime and White-Collar Crime. While the most common and publicly recognisable as crimes decreased due to the confinement, the Interpol expressed its concerns on the increase of fraud and

business crimes. What kind of measures can tackle this increase under your point of view?

I would say that the resurgence dynamics of all those criminal phenomena will resemble the “V” or “Nike swoosh” shaped curve that everyone was talking about concerning the economic recovery after the COVID-19 lockdowns.

But nothing new there: the association between periods of crisis and fraud-related crimes is well known and I believe this will be again the trend shortly. Probably accentuated in the digital field and fostered by the fraud “opportunities” created by the subsidies and financial assistance support for the economic recovery, particularly the tens of millions that will be channelled by the European Union. There are some ways to tackle these risks in advance: foster greater cooperation and integration on a supra-national scale (and the European Public Prosecutor’s Office may be an essential step), extend alternative mechanisms to prosecution in Criminal matters and require by legal means greater self-compliance responsibility from corporations. The Portuguese government seems to be moving in that direction by the recent approval of an ambitious anti-corruption package (yet to be implemented) which may bring some significant changes to our Criminal system, notably by broadening the possibilities for plea bargaining and strengthening (and rewarding) mechanisms for Criminal compliance adopted by corporations. 