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Portuguese judicial system: reflections and recipes

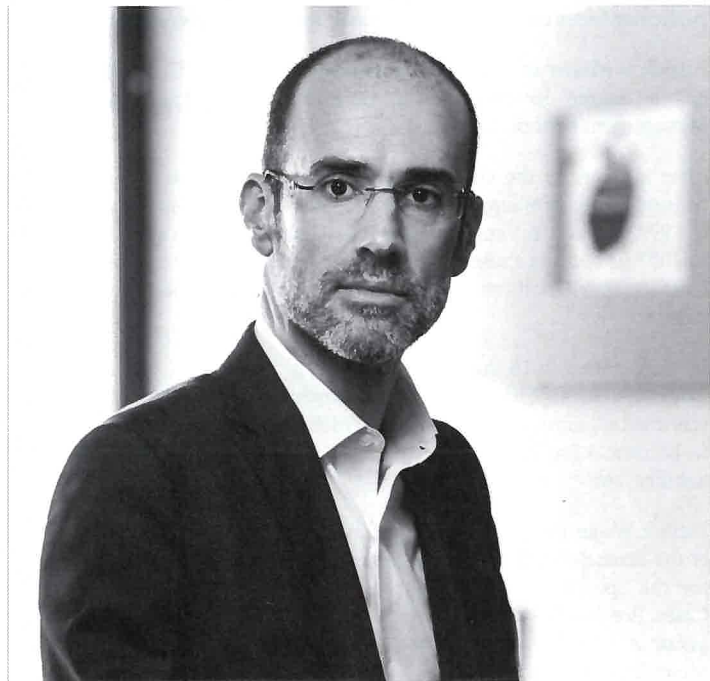
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Pandemics are, perhaps, the ideal chance to indulge into something that we so often lack: stop, analyze, reflect. This much needed internal exercise, as a great workout for each and everyone's critical awareness in such instable times, can unleash some interesting thoughts on the globalization impacts, on the health systems, on the wide-ranging political reactions, and, of course, on judicial systems. Shall we?

As some might be aware, Portugal has been facing, during the last years, an increase – in number, in complexity, and in social impact – of new criminal proceedings brought to our courts. This criminal flow that seems to be filling our national courts can be explained by a multitude of different reasons, both legal and sociological, that fluctuate from the existent resources in the Portuguese judicial system, to the actual nature and outlines of these cases. On the matter of white-collar crime, for example, the most recent legal developments and the involvement of political figures in some of the biggest criminal cases that emerged in the last couple of years, have triggered a wave of scrutiny and thorough examination by the society as a whole. This rising social consciousness specifically on conducts related to white-collar infringements also plays a role in the global perspective that we, as a nation, have of our own judicial system and, instinctively, how we interpret the national and European statistics on justice and its enforcement.

As a second thought relevant for today's collective reflection, it should be pointed that our judicial system is not only being confronted with a growing number of criminal cases, but also with cases of greater complexity, usually involving a vast set of facts that occurred during an extended period of time. The profile of these criminal proceedings, as we have just outlined, contributes not only to longer investigations, that drag along years and years, but also originates an almost miraculous phenomenon, in an ironic sense, of course. Such complex proceedings, giving the different nature of the facts there discussed, and the individuals involved, frequently originate new (and substantially different) proceedings. This phenomenon of birth of new criminal proceedings, not as a miracle but as an unavoidable consequence of this intricate web of facts, persons, and events, not only contributes to the social impact of these cases but also complicates the obtainment of a fast outcome or of a final decision declared within a reasonable period of time.



All of the above thoughts, more as descriptions than as reflections, help to illustrate the overall *less-positive* image that most Portuguese – especially the ones who do not work in legal professions, and, therefore, feel far and more disconnected from its reality – have of our judicial system. Perhaps, however, as another ingredient for our broth of reflections on the judicial system, this lack of trust that we, sociologically speaking, seem to reveal towards our justice unveils a cultural trace fed by the people's way of facing the State, its institutions, and, perchance, themselves.

One thing we can assume for sure, in this puzzle of reflections: the slowness, and most of all, the perspective that we (again, sociologically)

have of how slow the justice is enforced in our jurisdiction is one of the most discouraging factors that lead people to give up, or not to resort to courts at all, when facing an injustice (*lato sensu*). But then again, this ingredient is no new, nor in our jurisdiction, nor in so many others, since it has always been clear that the citizens' trust in the judicial system is inversely proportional to the slowness of the institutions, to the appearance of corruption scandals, and to other diseases that are currently still infecting, and affecting, our system.

On another hand, and while still on the matters of white-collar crime, the overall view that we just painted, or the broth that we are

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trying to cook here, has had an additional and different impact, this time in a more preventive side of the coin. If it is true that the judicial system is currently facing the challenges of an increasing number of criminal procedures, it is also true that Portuguese companies have been investing more and more in a preventive posture within its businesses. Such preventive posture reflects itself in the companies' effort to create, and follow, compliance procedures, anti-fraud and anti-bribery policies, and general codes of conduct. The growing concern with an environment of integrity, transparency and legal compliance within the companies is, itself, a reflection, a very positive one – it must be added, of said legal developments and rising social consciousness.

Regardless of the issues herein identified, some crucial, some discouraging, some enlightening, and some promising, it is our job, our mission if you will, to continue to battle against the obstacles posed on our justice system, as those constitute one of the very serious pandemics of the XXI century. In the words of Montesquieu *“Il n'y a point de plus cruelle tyrannie que celle que l'on exerce à l'ombre des lois et avec les couleurs de la justice”* (there is no crueler tyranny than that which is perpetuated under the shield of law and in the name of justice). May we keep finding strength, and good ingredients, towards a universal judicial system where justice is blind and accessible to all.

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Rui Patrício joined the firm in 1994 and became a partner in 2005. He's the coordinator of the criminal and compliance department. He is member of the Board of Directors of the firm since October 2008.

He's the one of the firm's most experienced lawyers in the area of litigation, having developed the area of compliance, criminal and misdemeanours litigation, as well as having extensive activity in the area of civil litigation.

His work in the criminal and misdemeanours area has been accompanied by an academic and lecturing career. Since 1994 and until 2006 he taught subjects in the areas of civil and criminal law at the Law Faculty of the University of Lisbon. Between 2007 and 2013 he was an Invited Professor at the Law Faculty of Nova University – where he has returned in 2020.

Member of the Judiciary Superior Council between May 2009 and November 2011. Member of the Corruption Prevention Council from April 2017 up to January 2020. Rui Patrício is currently, among others, member of the OPCR's board (Observatório Português de Compliance e Regulatório) and, as of September 2019, member of the board of Fundação de Arte Moderna e Contemporânea–Coleção Berardo, by appointment of the Ministry of Culture.

Rui participates in seminars and conferences and lectures predominantly on criminal and misdemeanor legal themes in masters and postgraduate courses.

He collaborates with the media on matters related with justice. Author and co-author of law books and articles. Rui Patrício co-edited the Portuguese Bar's magazine in 2018 and 2019.

He co-coordinates Instituto Miguel Galvão Teles, established in 2016.

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