

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

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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	Instrumental influence
		Legal and juridical influence
		Procedure influence
	EU integration	

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
	<i>Projects</i>	Internal communication
	<i>Information and Communication Technologies</i>	
	<i>Macro</i>	Infocommunicational competences
Public Policies	<i>Meso</i>	
	<i>Micro</i>	
	<i>Magistrates</i>	
	<i>Criminal Police Bodies</i>	
Judicial System	<i>Projects</i>	
	<i>Judicial Secretaries</i>	
	<i>Culture</i>	
	<i>Interaction between actors</i>	
Tradition	<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
Modernization	<i>Processes</i>		1	1
			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
	Magistrates		1	6
	Criminal Police Bodies		0	0
	Projects		3	10
Tradition	Judicial Secretaries		0	0
			5	7
	Culture		5	7
	Interaction between actors		2	3
	Procedures		2	2
	Processes		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.” [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 was being 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.

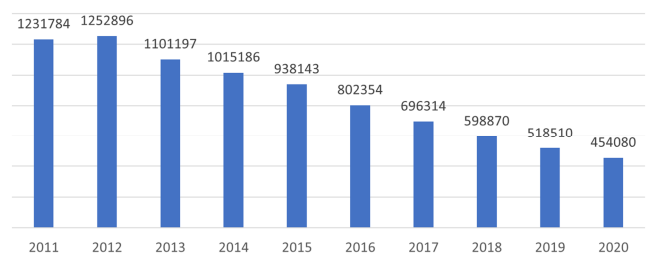
“[...] because Justice, for a few years now, has had many years at a standstill in terms of technological evolution. Therefore, I think it is perfectly normal, even cultural, because the world of Justice is typically jurists and jurists, in principle, had legislation and the Codes as their bible. And 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

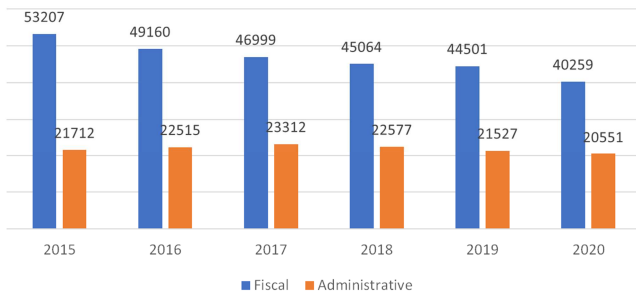
Figure 1. Pending executive processes.

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.

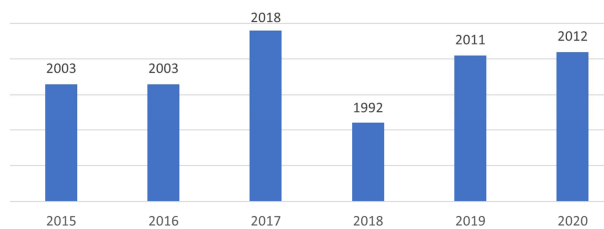


Source: Justice statistics⁶

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

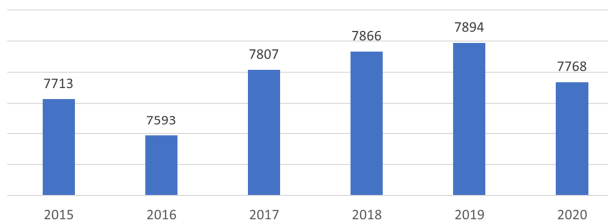
5.7. Number and Age of Judicial System Workers

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

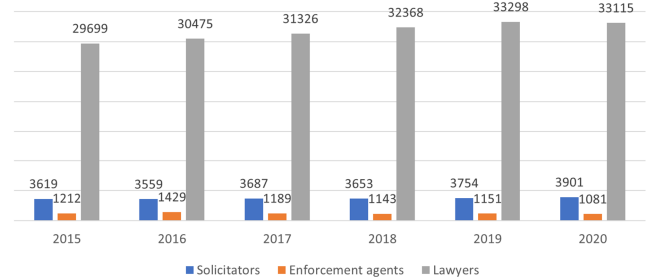
Figure 4. Other judicial workers in Courts.

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.

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