INTERNATIONAL COMPARATIVE STUDY ON ALLOCATION OF CASES TO AND WITHIN COURTS -

The case of Portugal

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1. A brief description of the Portuguese judicial system

The Portuguese population has increased about 3.8% over the last five years, totalling, in 2001, 10,335,559 inhabitants.

Table 1
Portuguese inhabitants (1997-2001)

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Portuguese citizens</td>
<td>9,957,270</td>
<td>9,979,960</td>
<td>9,997,590</td>
<td>10,242,900</td>
<td>10,335,559</td>
</tr>
<tr>
<td>Foreigners</td>
<td>175,263</td>
<td>178,137</td>
<td>190,896</td>
<td>208,198</td>
<td>226,715</td>
</tr>
</tbody>
</table>

Source: Estatísticas da Justiça 2001

One of the founding principles of the Portuguese legal system is that of the independence of the courts. The Constitution of the Portuguese Republic expressly declares that the courts, whose essential function is to administer justice, are sovereign entities of the State, like the President of the Republic and Parliament. They are, naturally, independent of parliament and the executive, and only subordinated to the law.

The Portuguese judiciary organisation was established by Law nº 3/99, of January 13th (Judicial Oganisation Ac), and regulated by Decree-Law nº 186-A/99, of May 31st. The Portuguese territory is divided into four judicial districts, whose centres are in Lisbon, Oporto, Coimbra and Évora. These judicial districts are divided into judicial circuits. Judicial circuits can comprise one county (such as the Lisbon judicial circuit) or several counties. Law establishes the seat of the court of each county and its territorial jurisdiction. Nowadays, the territorial jurisdiction of each county is very close to the territorial competence of each municipality, especially in the urban areas.

The Constitution and the Law establish the existence of the following courts in the Portuguese judicial system: the Constitutional Court; the Supreme Court of Justice; the judicial courts of first and second instance (tribunais da relação); the Administrative Supreme Court, the administrative courts of first and second instance (tribunais centrais administrativos); the Court of Auditors, institutional or ad hoc arbitration, as well as the justices of the peace (julgados de paz).

The Constitutional Court is specifically responsible for constitutional matters. Administrative matters are dealt with in the separate administrative court hierarchy. This leaves criminal and ordinary civil matters to the “judicial courts”.

The judicial hierarchy consists of courts of first and second instance and the Supreme Court of Justice. The division between courts of first and second instance is related to the system of appeals. The courts of second instance are called tribunais da relação, and there are currently five of them in action. The Supreme Court of Justice (Supremo Tribunal de Justiça) is the highest entity in the hierarchy of the judicial courts. It is possible to appeal to this court for a third evaluation of a case. In some situations, an appeal can be brought to this court directly from the first instance court.

First instance judicial courts generally are the county courts. These county courts (tribunais de comarca) are courts of general jurisdiction with power to decide on all the cases not submitted by law to another court. In accordance with the Constitution and with the legislation mentioned above, the courts of first instance are organised according to subject matter (specialized courts), territory and value or form of procedure (special courts). The Judicial Organisation Act foresees the creation of specialized and special courts in a specific county, when the government, due to various factors, like the amount of pending cases and social demand, so decides.
The territorial jurisdiction of the first instance judicial courts generally coincides with the territory of the county. However, specialized courts may have territorial jurisdiction over more than one county or over more than one judicial circuit. In special circumstances, a judge may be appointed to more than one court of first instance.

According to the Judicial Organisation Act, specialized courts: criminal investigation courts; family and children courts; labour courts; commerce courts; maritime courts; and judgment-execution courts. Specialized courts exist, in larger numbers, in the most important counties (urban areas). They have power to decide on cases related to specific matters, regardless of their value and form of procedure.

Map 1
Specialized Courts’ Territorial Competence

The number and territorial competence of specialized courts are limited. Labour courts are an exception. There are 50 of them (50) and they extend their competence over most of the country. But even so, they are located only in urban areas.

The Judicial Organisation Act establishes the following special courts: civil panel courts (varas cíveis), criminal panel courts (varas criminais), panel courts with mixed civil and
criminal competence (varas mistas) (panel courts are formed by three judges and their competence over civil and criminal cases is specifically established by Law), civil (juízos cíveis) and criminal (juízos criminais) trial courts (that have only one judge), small claims courts (juízos de pequena instância cível) and misdemeanour courts (juízos de pequena instância criminal), and execution courts. The special courts have power to decide on specific matters according to their procedural value and the form of procedure. For example, in some counties, petty crimes are tried in misdemeanour courts. The courts of general jurisdiction, the specialized courts and the special courts may be internally organised into different departments.

2. Judicial administrative staff

The judicial administrative staff is composed of judges, public prosecutors, assessors, court administrators, law and court clerks, lawyers and execution officers.

The judges hold the offices of the judicial power of the State, which they exercise in an independent manner. In what concerns both ordinary and administrative jurisdictions, the law establishes three categories of judges: judges of the higher courts, who are called “conselheiros”; judges of the second instance courts, who are called “desembargadores”; and judges of the first instance courts, who are called “juízes de direito”. The High Council of Judges and the High Council of Administrative and Tax Courts are responsible only for managing and disciplining judges.

Table 2
Number of Judges (1997-2001)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Juízes Conselheiros</td>
<td>66</td>
<td>65</td>
<td>73</td>
<td>83</td>
<td>76</td>
</tr>
<tr>
<td>Juízes Desembargadores</td>
<td>259</td>
<td>265</td>
<td>322</td>
<td>312</td>
<td>317</td>
</tr>
<tr>
<td>Juízes de Direito</td>
<td>1190</td>
<td>1233</td>
<td>1204</td>
<td>1229</td>
<td>1297</td>
</tr>
<tr>
<td>Total</td>
<td>1515</td>
<td>1563</td>
<td>1599</td>
<td>1624</td>
<td>1690</td>
</tr>
<tr>
<td>In Judicial Courts</td>
<td>1267</td>
<td>1324</td>
<td>1382</td>
<td>1368</td>
<td>1440</td>
</tr>
<tr>
<td>per 100 000 inhabitants</td>
<td>13</td>
<td>13</td>
<td>14</td>
<td>13</td>
<td>14</td>
</tr>
</tbody>
</table>

Source: Estatísticas da Justiça 2001

Public prosecutors, among other duties, take part in the execution of the criminal policy determined by the political power; exercise criminal action guided by the principle of legality; and promote democratic legality. These public prosecutors are independent from the executive power, self-governed, and have their own status, very similar to that of judges. The Attorney General’s Office, presided over by the Attorney General, is the highest-ranking department in the Public Prosecution Service. It has disciplinary and management responsibilities exercised through the High Council of the Public Prosecution Service.

Besides the Attorney General, there are Assistant Attorney Generals (who usually represent the Public Prosecution Service in higher instance courts), State Prosecutors and Assistant State Prosecutors (who usually represent the Public Prosecution Service in first instance courts).

1 Not all judges are, at one time, exercising their judicial career in a court. From the total number of judges, some are assigned, for a limited period of time, to perform other tasks, such as managing administrative services connected to the judicial system.
Table 3
Number of Public Prosecutors (1997-2001)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant</td>
<td>124</td>
<td>135</td>
<td>155</td>
<td>161</td>
<td>162</td>
</tr>
<tr>
<td>Attorney</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generals</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>197</td>
<td>205</td>
<td>205</td>
<td>333</td>
<td>354</td>
</tr>
<tr>
<td>Prosecutors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistant</td>
<td>766</td>
<td>775</td>
<td>778</td>
<td>686</td>
<td>711</td>
</tr>
<tr>
<td>State</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecutors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>1087</td>
<td>1115</td>
<td>1138</td>
<td>1180</td>
<td>1227</td>
</tr>
<tr>
<td>In Judicial</td>
<td>964</td>
<td>982</td>
<td>999</td>
<td>1068</td>
<td>1070</td>
</tr>
<tr>
<td>Courts</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>per 100 000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>inhabitants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Estatísticas da Justiça 2001

Law n. 2/98, of January 8th created the position of judicial assessor\(^3\). The judicial assessors’ function is to assist the judges and the public prosecutors by gathering information on the law, literature and judgements, as well as to summarize scientifically relevant decisions and organise them into files and databases. They can also have other responsibilities, which are delegated by a judge or public prosecutor, such as issuing minor decisions, setting up the service’s work schedule and drafting procedural documents. They are assigned to the Supreme Court of Justice and to the courts of second instance (tribunais da relação). They can also be placed in first instance courts when the volume and complexity of caseloads so requires.

Table 4
Number of Judicial assessors, by court, in December, 31st, 2001

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court of Justice</td>
<td>11</td>
</tr>
<tr>
<td>Second Instance Courts</td>
<td>7</td>
</tr>
<tr>
<td>Judicial First Instance Courts</td>
<td>11</td>
</tr>
<tr>
<td>Administrative and Tax Courts</td>
<td>17</td>
</tr>
<tr>
<td>Total</td>
<td>46</td>
</tr>
</tbody>
</table>

Source: Estatísticas da Justiça 2001

The Law foresees the appointment of court managers. Their generic duties are to help the presidents of the most complex courts with their administrative duties, and to support them when they so request, under their guidance and supervision. In these courts, the court manager also operates as a decentralized body of the Ministry of Justice, having specific responsibilities regarding logistics, budget control, and human resource management. However, there hasn’t been appointed any court manager so far. Our investigation points to the need for a specialized manager of the court. It also pointed out that the implementation of this reform

\(^2\) Not all public prosecutors are, at one time, exercising their career in a court. From the total number of public prosecutors some are assigned, for a limited period of time, to perform other tasks, such as managing administrative services connected to the judicial system.

\(^3\) The judicial assessor is a special Law clerk that exists in higher courts and in courts of first instance with a high number of cases entered. As we can see in Table 4, they are quite few.
has been postponed mainly due to some issues brought by judges, law clerks and court clerks.\footnote{Gomes, Conceição (coord.) (2001a), A administração e gestão da justiça na década de 90 – Análise comparada das tendências de reforma. Coimbra.}

The duties of Law Clerks consist of assisting the judges and public prosecutors with the proceedings. Law clerks also perform a series of legally established duties, namely, running of the clerks’ bureau or of the office of the court-unit, compiling statistical charts, and keeping records of the clerk of the court’s office’s expenses.

As regards procedures, the Law gives law clerks and court clerks powers to summon the defendant in civil procedures and to issue administrative decisions when delegated by a judge or public prosecutor.

**Table 5**

Number of law clerks and court clerks in Judicial Courts (1997-2001)

<table>
<thead>
<tr>
<th>Year</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>7400</td>
<td>7605</td>
<td>8213</td>
<td>9040</td>
<td>9446</td>
</tr>
<tr>
<td>per 100 000 inhabitants</td>
<td>74</td>
<td>76</td>
<td>82</td>
<td>88</td>
<td>91</td>
</tr>
</tbody>
</table>

*Source: Estatísticas da Justiça 2001*

In Portugal, as in most European countries, advocacy is the legal career whose duties are to perform the power of attorney or to independently provide legal consultation, to defend the rule of law and the citizens’ individual rights and guarantees, as well as to collaborate in the administration of justice\footnote{by Law, lawyers have the general duty of collaboration with the courts. For instance, they should endeavor not to use the courts without due cause, and they should notify the court when they have relevant information for the planning of the court proceedings.}. Lawyers should also, through the Bar Association, be heard regarding new bills concerning advocacy and the general competence of attorneys. There is no established specialization for lawyers in Portugal\footnote{As far as we know, there is an ongoing debate considering the specialization of lawyers in some areas like, for instance, administrative law.}.

**Table 6**

Members of the Bar Association in December, 31st

<table>
<thead>
<tr>
<th>Year</th>
<th>1997</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>14 462</td>
<td>16 440</td>
<td>17 733</td>
<td>18 629</td>
<td>18 954</td>
</tr>
<tr>
<td>per 100 000 inhabitants</td>
<td>145</td>
<td>165</td>
<td>178</td>
<td>182</td>
<td>183</td>
</tr>
</tbody>
</table>

*Source: Estatísticas da Justiça 2001*

In 2003, the function of execution officer was established with specific competences considering civil executions.

As we can see from the tables above, in 2001, Portugal had, in judicial courts, 1,440 judges, 1,070 public prosecutors and 9,446 law and court clerks. The number of judges, public prosecutors, law and court clerks, and, particularly, lawyers (currently around 19,000) rose significantly, in absolute and relative terms. In the case of judges, public prosecutors, law and court clerks, the increase reflects the system’s response to the growth of both civil and
criminal litigation. Some procedural and structural reforms (the creation of new special and specialized courts) have also contributed to the same trend.

The growth of the number of lawyers is mostly independent of the variation in the demand for judicial services, and is mainly due to the creation of new private Law Schools. In addition to the five existing state Law Schools, many private schools have been created in a short period of time. Although the Ordem dos Advogados (Bar Association) has tried to control access to the profession through an examination, this system has not yet proven to be very selective.

3. **New Information and Communication Technologies**

The new information and communication technologies have been widely considered as an essential instrument for the renewal of the court and case management methods and, as a result, for the renewal of the administration of justice itself. The importance of the information technologies’ contribution in the building of a more swift, transparent and accessible justice has been a part of the governmental discourse since late 1998, when the Judiciary Computerization Plan was approved. This Plan, still in force, aims at, among other goals, connecting all courts and justice administrative services in a network; and at introducing procedural management software to automate most of the clerk of the court’s office’s tasks. Also worth mentioning are technological innovations, such as the internet access to jurisprudence databases, the payment of justice fees through ATMs, the possibility of emailing briefs (which, when used, automatically reduces court fees by 10%), the videoconference system (witnesses and experts can be heard this way from outside the county) and the possibility of internet consultation of the processes by the lawyers (only foreseen for the administrative and tax jurisdiction).

4. **Allocation of cases between courts**

As was mentioned above in section 1, the Portuguese legal system foresees two major jurisdictions: the ordinary jurisdiction and the administrative and tax jurisdiction. This last was recently fundamentally restructured. It is, among others, the competence of the administrative and tax courts to handle the litigation generally related to rights and interests protected by administrative law and to public servants’ civil responsibility. This jurisdiction comprises three hierarchical types of courts: the Supreme Administrative Court, the second instance administrative courts and administrative and tax courts.

The Supreme Administrative Court (SAC) resides in Lisbon and has jurisdiction over the whole Portuguese territory. This court is divided into two sections: the administrative contentious section and the tax contentious section. The SAC generally decides appeals from decisions of inferior courts and also issues first instance decisions, among others, over actions from the highest instances of the state, such as the President of the Republic and the Prime Minister.

There are two second instance administrative courts, one in Lisbon and the other in Oporto. These are typical second instance courts, generally deciding over appeals from decisions of first instance administrative courts.

First instance courts are the administrative and tax courts. Their territorial competence is assigned by the defendant’s residence or headquarters. However, there are specific assignment rules according to the territorial competence of the court. For instance, in cases related to real estate, the competent court is the one of the county in which the estate is located, and in civil liability cases for which administrative bodies are responsible, the competent court is the one of the county in which the tort has occurred.
The judicial courts are the ordinary courts in civil and criminal matters and have jurisdiction over all matters not assigned to another judicial order.

The ordinary jurisdiction is organized in three hierarchical degrees: the Supreme Court of Justice, the ordinary second instance courts (tribunais da relação), and the ordinary first instance courts.

The Supreme Court of Justice has competence over the whole Portuguese territory and is the highest organ within the judicial courts hierarchy. It decides over appeals against decisions of inferior courts but, generally, only on questions of law.

There are presently six second instance judicial courts (tribunais da relação) in the judicial districts of Lisbon, Oporto (which also comprises a court in Guimarães), Coimbra and Évora (which also comprises a court in Faro). The second instance courts have a criminal, a civil and a social section, deciding over appeals against decisions of first instance courts.

The establishment of territorial competence within first instance courts obeys different rules, according to the different kinds of litigation. Within civil procedure, the territorial competence is usually assigned according to the residence of the defendant. There are, however, specific rules for certain kinds of proceedings like, for instance, debt claims, in which the court with territorial competence is the one identified in the contract (generally the one of the debtors’ residence); in real estate processes the territorial competence follows from the location of the property; in actions for execution, the competent court is the one which has tried the declaratory action or the court of the county where the obligation is due.

Regarding civil justice, the courts’ territorial competence, which is established by law, can be changed by agreement of the parties (agreed competence). This happens, for example, in contracts celebrated with mobile communications companies, banks and insurance companies.

Within criminal procedure, the courts’ territorial competence generally is established according to the place where the crime was committed.

Moreover, the Portuguese judicial organization foresees two major divisions when it comes to first instance courts: courts of general competence (county courts) and special courts, when it comes to matter; and courts of general competence and courts of specialized competence, when it comes to applicable procedural form or action value.

County courts have general competence, as far as specific proceedings have not been assigned to another judicial court. The specialized competence courts, within their territorial range, only judge processes concerning specific matters.

There are the following courts of specialized competence in Portugal: criminal investigation courts; family and children courts, which judge, among other matters, divorces, custody and guardianship of children under the age of sixteen; commerce courts, which judge, namely, bankruptcy proceedings and partnership agreements’ matters; labour courts, which judge, among others, matters regarding dependent work, accidents in work and occupational diseases; maritime courts, with jurisdiction over matters regarding ships and generally all issues related to maritime contracts; and Judgement-Execution courts, with competence to control and to decide over matters related to the execution of prison sentences.

Considering the latest official data available (2001), the judicial jurisdiction counted three hundred and twenty seven (327) first instance courts (about 3.2 per 100,000 inhabitants) and eighty four (84) are courts of specialized competence.

Concerning the applicable procedural form and the action value, there are courts of general jurisdiction and special courts. There are the following special courts in Portugal: civil panel...
courts (for causes above 3,740.98 €) and criminal panel courts (for severe crimes); civil trial courts\(^9\) and criminal trial courts\(^10\); small claims courts\(^11\) and misdemeanour courts\(^12\) (related to small values and petty crimes); and execution courts\(^13\).

Regarding the courts’ constitution, first instance courts may be single judge courts; collective courts (composed of three judges) and jury courts (composed of the president of the collective court, who presides, of the other judges, and of the jurors). These last courts only decide criminal cases.

**Fig. 1**
Courts Organization Chart

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Source: High Council of Judges

If two or more first instance courts, from different jurisdictions, find themselves incompetent (negative conflict of jurisdiction) or competent (positive conflict of jurisdiction) to rule over a

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\(^9\) Civil Trial Courts judge all cases when there are no Civil Panel Courts. If there are Civil Panel Courts, they judge cases up to 14,963 €. When there are Civil Panel Courts and Small Claims Courts, Civil Trial Courts judge cases from 3,740 € up to 14,963 €, if they concern debts and civil liability, and up to 14,963 € in other cases.

\(^10\) Criminal Trial Courts, when there are no Criminal Panel Courts, judge all cases. When there are Criminal Panel Courts they judge crimes punishable with imprisonment until 5 years and cases which can follow the very summary, summary or abbreviated procedures. When there are Criminal Panel Courts and Misdemeanour Courts they judge crimes punishable with imprisonment until 5 years, but only if they don’t follow the summary, abbreviated or very summary procedure.

\(^11\) Small Claims Courts judge cases below 3,740 €, but only if they concern debts and civil liability.

\(^12\) Misdemeanour Courts judge crimes punishable with imprisonment until 5 years that follow the summary, abbreviated or very summary procedure.

\(^13\) Executions courts are newly created courts that will be responsible, in some counties, for civil executions.
certain cause, the conflict may be solved by the Supreme Court of Justice or by the, so called, Court of Conflicts\textsuperscript{14}, according to the cases.

According to the criteria established by law, each court has legal capacity to officiously determine its jurisdiction and competence over a specific cause. The incompetence, in some cases, may only be alleged by the parties. If two or more first instance courts, within the same jurisdiction, find themselves incompetent (negative conflict of competence) or competent (positive conflict of competence) to judge a certain cause, the conflict is generally solved by the Second Instance Court, with the possibility of appeal to the Supreme Court of Justice\textsuperscript{15}.

If a suit is brought while another identical suit (concerning the same parties, the same pleading and the same cause) is still pending in a different court, as a rule, one of the courts will find itself incompetent. However, if the court where the second suit was brought finds itself competent, or if the suit is brought to the same court, the parties, or the court, may, officiously, plead pendency, which implies the acquittal of the defendant from the second suit, preventing the court from contradicting or reproducing a previous decision.

Portuguese courts can’t judge a case after a first decision has passed \textit{in rem judicatum}. If a suit, identical to another already passed \textit{in rem judicatum}, is brought to court, both the parties and the court may plead \textit{res judicata}, meaning that the defendant is acquitted in that instance. If, however, two contradicting decisions are pronounced, the first to pass \textit{in rem judicatum} prevails.

According to the legal rules mentioned above, concerning allocation of cases between courts, the courts’ competence for the trial of a specific case is assigned through the general principle of the “natural judge”\textsuperscript{16}, whether the case is of civil, administrative or of criminal nature. The competence rules, whether related to territory, value and procedure, or matter, are defined by law. The parties, defendants, victims, Public Prosecution Service or any other judicial, police or administrative entities aren’t generally allowed to choose the competent court to judge a case. The only exception occurs within civil law where for certain actions the parties may, tacitly or explicitly in a contract, agree to bring the suit in a different court than the one indicated by law.

This means that, for example, whenever the number of cases entered in a given court shows a relevant increase (for example, if a mobile communications company settles in that county), the judicial demand of that court cannot be forwarded to another court. The only response possible is the allocation of extra resources. That is, the state may only create a new court, or new trial courts, or new departments in the same court, or assign more human and material resources to that court.

\section{Allocation of cases within a court of first instance}

The way in which the cases are allocated within first instance courts has two purposes: to achieve a balanced workload in the courts, and to randomly assign the cases to the appropriate court department. Normally, in the Portuguese judicial system, court presidents only supervise the automatic proceedings that are established by law to randomly distribute cases by the courts divisions.

\textsuperscript{14} The Court of Conflicts is an ad hoc court that only decides jurisdiction conflicts between ordinary and administrative jurisdictions, arising at the Court of Appeal stage.

\textsuperscript{15} These conflicts are solved formally. However, as far as we know, the number of appeals concerning conflicts of competence is low.

\textsuperscript{16} See section 5.
5.1 Civil procedure

All the petitions that initiate a legal action should be directed to the appropriate court with respect to its jurisdiction in terms of territory and matter. Generally, cases are sent to the county court (courts with general jurisdiction), but they can also be specifically addressed to a court with specific jurisdiction or special competence.

In the courts with general jurisdiction, the petitions are sorted according to the different categories established by Law, such as ordinary proceedings, summary proceedings, special summary proceedings, special proceedings, divorce and separation proceedings, probate proceedings, and bankruptcy proceedings.

Distribution is random within the several categories and takes place every Monday and Thursday. There is an allocation book, in which the allocation of the various categories to the specific court units is recorded. The first petition of a particular category is assigned to the appropriate unit to which no petition of that group was assigned in the previous allocation. The remaining petitions of the same category are sequentially assigned to the other appropriate units of the court. All the petitions received up to the distribution days (regardless of their quantity) are always assigned to the different units of the court.

When there is only one petition of a certain category to be assigned, the Code of Civil Procedure has special rules. In such cases, the petition is randomly assigned to one of the appropriate units that did not receive a petition from that category in the previous distribution. If there is only one petition of a certain category and only one appropriate unit that has not received a petition from that category in the previous distribution, all of the appropriate court’s units will be taken into account in the random assignment.

The aim of these rules is not only the even distribution of the quantity and category of cases among the various courts’ units, but also the randomness of the distribution, making it impossible to predict the assignment of a specific case to a specific judge.

The same procedure, duly adapted, is followed by both the specialized courts and by the special courts.

The cases are allocated to each of the court’s units regardless of the number of pending cases they have. The complexity or specific intricacy of each case is not taken into account either. In the judicial circuits and counties where there are specialized courts and special courts, the distribution of the cases among those courts minimizes the effects of this situation.

5.2 Criminal procedure

a) During the inquiry

In the inquiry phase of the criminal procedure, the legal authority with competence to superintend the process is the Public Prosecution Service.

The distribution of cases by the Public Prosecution Services’ officials considers principles and purposes different from those of the distribution of cases by the judges. The Public Prosecution Service, despite being an organ of the judiciary composed of constitutionally independent and impartial officials, is also a hierarchically organised structure. Therefore, the Law showed no interest in an abstract definition of the distribution criteria of the inquiries by the several public prosecutors. Such criteria are thus determined by the public prosecutors and assistant attorney generals in charge of the specific services of the Public Prosecution Service.\footnote{Public prosecutors and assistant attorney generals are chosen to manage a specific service of the Public Prosecution Service by the High Council of the Public Prosecution Service, for a certain period of time.}
b) During the trial
After the prosecution is pronounced by the public prosecutor or after the indictment is made by a judge, the case is allocated to one of the court’s units. This distribution is made on the basis of the same rules applied in the civil procedure. Furthermore, this random distribution of cases is also constitutionally established according to the principle of the “natural judge” that, within the criminal procedure, specifically forbids that a given criminal proceeding can be assigned through an ad-hoc decision.

In the special courts and in the specialized courts, the procedures, with appropriate adaptations, are similar.

5.3 Administrative Procedure
In administrative contentious proceedings, the new Administrative Courts’ Code of Procedure has introduced some changes regarding the way in which processes are internally allocated. Now, the distribution, performed on a daily basis, is a duty of the court’s president. The law forbids, however, that this distribution may be performed in an arbitrary fashion. The distribution must follow the principles of impartiality and of the “natural judge”, and it should observe the following criteria: type of process, sorted according to criteria to be determined by the High Council of the Administrative and Tax Courts, by proposal of the court’s president; judges workload and subsequent availability; and matter.

The internal allocation of cases within administrative courts is, thus, completely different from what happens within civil and criminal procedures. Unlike those jurisdictions, the administrative contentious’ reform introduced significant changes in what concerns the duties assigned to the courts’ presidents, namely when it comes to the allocation of cases. It is the courts’ presidents’ duty, now, to perform, in respect of the above mentioned criteria, the planning and organization of the court’s human resources, thus assuring an equitable allocation of processes to judges, as well as arranging an equitable re-allocation of those processes, if there is a variation in the number of judges.

6. (Un)expected changes in caseloads and backlogs
Similarly to what is happening in other European countries, the judicial demand in Portugal, considering the various jurisdictions, has shown an exponential growth, reflected in the number of cases entered.

6.1 Variation in judicial demand and supply of civil litigation
Fig. 2 shows the evolution of the total number of civil cases entered, pending, and disposed of in the period between 1970 and 2001, including all the different types of civil procedure except the employment procedure. The number of cases entered provides a measure of the actual demand for the services of the judicial system. There has been a sharp growth in demand throughout the period under consideration, especially noticeable in the period immediately after the 1974 revolution and in the 1990s. Social, economic, and legal factors explain this variation. The increase is mainly due to the increasing numbers of three types of litigation: debt claims; torts related to traffic accidents; and divorce.

The number of cases disposed of corresponds to the supply of judicial services. We can see that the volume of cases disposed of has also increased, but not as much as the volume of cases entered. Pending procedures gives us the measure of unfulfilled demand. The period
between 1975 and 1988 saw considerable accumulation of pending cases, due to the increase in cases entered.

After 1988, we can observe an apparent tendency for the number of pending cases to decrease. This situation may mean that the growth of litigation has been accompanied either by growth in the material and human resources of the judicial system, or by an increase in the system’s productivity, influenced, for instance, by changes in substantive or procedural law. However, this positive indication only lasted for about five years, after which there has been an exponential growth of pending cases.

**Fig. 2**
Evolution of civil procedures pending, entered and resolved
1970 – 2001 (per 100 000 inhabitants)

![Graph showing the evolution of civil procedures pending, entered and resolved from 1970 to 2001.](image)

*Source: Department of Studies and Planning of the Ministry of Justice*

### 6.2 Variation in judicial demand and supply of criminal litigation

A similar growth trend can be observed within criminal justice. Social-economical factors led to an increase in registered crime (namely false checks, drug crimes and motoring crimes) and to the increase of the so-called “urban” criminality (theft and robbery) usually linked with drug addiction. This quantitative growth in criminality, exponentially initiated in the early nineteen eighties, was followed, in recent years, by a qualitative transformation, with complex criminality (endured by politically or economically powerful individuals, and resorting to sophisticated schemes such as corruption, money laundering and drugs dealing) gaining increasing relevance.

Despite the quantitative growth in criminal procedures within the judicial system, there is a very important discrepancy between the inquiry and the trial stages.

Fig. 3 shows, for the 1990-2001 period, the evolution in the number of inquiry processes entered, that is, the evolution of the criminality reported to the Public Prosecution Service and to the police and, also, the evolution of the processes entered for trial.
Fig. 3
Evolution of entered criminal procedures: inquiry/trial (1990-2001)

In spite of the tremendous selectivity of “reported criminality”, due to the relevant dimension of the “black cipher”, the number of processes in the inquiry stage has been continuously growing. Only between 1997 and 1999 the amount of reported criminality shows some decrease and stabilization, which mostly resulted from the decriminalisation of checks without funds.

Due to the principle of legality, the Public Prosecution Service has to investigate every crime reported or known and to every investigation has to be given a similar priority. However, our research shows that, in the investigation phase, the Public Prosecution Service does treat different types of crime differently. Those that are socially more relevant (major crimes) are investigated by some special units, different in every service of Public Prosecution. Those that are less relevant (minor crimes) are dealt with by other units in a less time consuming manner. The number of cases pending in courts has no bearing on the decision to prosecute. After prosecution, the Public Prosecution Service has no influence on the duration of the judicial process.

Only prosecuted or indicted processes reach the trial stage, which means that the number of processes entered in this stage mostly depends on the rate of prosecution. As you can see in Fig. 3, the discrepancy between the amount of registered criminality and tried criminality is considerable, with this latter merely reaching, on average, one third of the first one. The number of processes in the trial stage has been stable.

Although there has been some stabilization in the number of processes entered in the trial stage, and despite a very important part of the tried criminality does concern non-complex crimes (checks without funds and motoring crimes), there is also a significant number of cases pending within the criminal courts. For example, in 2001, there were 153 390 pending cases in the criminal courts.

Therefore, it cannot be considered a surprise that Portuguese courts have been so severely criticised over inefficiency and lengthiness of proceedings.

Source: Department of Studies and Planning of the Ministry of Justice
In fact, the average duration of processes within the first instance, both civil and criminal processes, has increased. Fig. 4 and Fig. 5 show the average duration of civil processes (considering declaratory actions and executions) and of criminal processes\(^{18}\).

**Fig. 4**
Evolution of civil processes disposed of and average duration 1990 – 2002

![Civil Processes Disposed of and Average Duration (1990-2002)](image)

*Source:* Department of Studies and Planning of the Ministry of Justice

**Fig. 5**
Evolution of criminal processes disposed of and average duration 1990 - 2002

![Criminal Processes Disposed of and Average Duration (1990-2002)](image)

*Source:* Department of Studies and Planning of the Ministry of Justice

### 6.3 Causes of delay

Moreover, an important proportion of the processes have a longer than average duration, because that average is distorted by a large number of proceedings of swift resolution. In fact,

\(^{18}\) The average duration of civil and criminal procedures is measured attending to the number of days between the date the case is entered in the court until the decision is issued in first instance. The average duration of criminal procedures mentioned in the text does not take into account the inquiry phase.
most civil actions are for debt collection, and these actions are solved relatively quickly, since the evidence is straightforward and they are seldomly defended. Within criminal justice, the situation is similar since, as mentioned above, many processes concerning motoring crimes are swiftly solved.

The inability of the State in creating a judicial system capable of responding, in reasonable time, to the differentiated demand for legal protection existing in society has aggravated general dissatisfaction with the functioning and efficiency of judicial institutions, shaking their credibility as a means of solving conflicts. The issue of «the delay of justice», despite being perhaps the most universal of the problems faced by courts, is certainly one of those which public opinion and the operators of the judicial system are most concerned about. The issue of «the delay of justice» directly affects the exercise and the guarantee of rights.

In Portugal, different factors hold up and delay the disposition of disputes in the courts, such as the law itself, the behaviour of judicial actors, the working conditions of the courts, and so on. The law itself is responsible for the delay in many types of action by requiring excessive or unnecessary formalisms. Answering to this situation, several reforms of the civil, criminal and administrative procedure have been introduced in the Portuguese legal system aiming at simplifications of proceedings.

The judicial actors (judges, lawyers, litigants, police, experts, clerks, and so on) may also contribute to an excessive duration of the procedure. In this case, the delay may be unintentional or intentional. Sometimes the boundary between the unintentional and the intentional is hard to perceive in a system with vast organizational deficiencies.

Delay may also be endogenous to the system, and it may result from the amount of service and/or routines acquired, as well as from the external and internal organization of the courts. The studies conducted by the Permanent Observatory of Portuguese Justice have enabled us to state that the main characteristics of the causes of delay are as follows.

a) The more varied, intense and cumulative the causes, the worse the delay. Consequently, measures to combat this delay will only be effective if they are taken in a coordinated manner by the various entities involved, and if they are directed towards all its causes. Only in this way it will be possible to avoid the effect of transferring delay from one cause to another, that is, the aggravation of a cause at the expense of a measure taken in isolation to diminish another cause. For instance, some courts have benefited from the appointment of temporary or auxiliary judges and public prosecutors, in addition to established posts, because they have many accumulated procedures. However, others aiming at completing or reinforcing the number of law and court clerks on the staff did not, as a rule, follow these measures. Consequently, there has been a transfer of delay from one cause to another. Procedures, which were previously halted because of a lack of judges’, became paralysed by a lack of clerks.

b) The different causes of delay thus act in a feedback system, one over the other. Delay leads to the backlogging of cases, which exacerbates staff inadequacy and poor working conditions. This in turn increases the delay and provides a justification for the delay itself. For example, lack of space is not a direct and necessary cause of delays, but there is a heightening effect on the irrational distribution of human resources when there is no space to accommodate them. This aggravates the accumulation and duration of actions, leading to judges and clerks losing motivation to work and at the same time not feeling responsible for delays in judicial procedures.

c) The irrationality in the distribution of clerks is found more frequently in the courts with poorer working conditions. When this irrationality is in itself a «strong cause», the duration of actions and the volume of work in each division immediately increase. Added to all this, poor working conditions cause a vast turnover of clerks, who request to be transferred to another court as soon as they have an opportunity. In fact, the most common irrationality factors

are the unfilled vacancies$, the insufficient number of staff recruited and the great mobility of clerks.

d) The lack of training or negligence of judges, law clerks and court clerks is found in any type of court. This, by itself, has a strong impact on the increase in delays. This cause of delay is independent of the volume of work in the courts. It is essentially characterised by a judge or clerk not working on a case for months or years, and this occurs frequently with the more complex procedures. These situations have been often registered in the reports of the periodical inspections, but according to our studies in the Permanent Observatory on Portuguese Justice, no serious consequence was inflicted on the negligent judges or clerks.

e) The irrationality in the distribution of judges and public prosecutors is one of the better-controlled causes of delay, but, when it does occur, the duration of actions increases immediately. It still happens today that courts stay without judges for some periods of time, when the office-holders are on a commission, prolonged leave of absence or maternity leave, and are not replaced by another judge during that period. Backlogs accumulate during the resulting delays, and take years to overcome.

Endogenous slowness is common to the whole system, but it has specific characteristics from county to county, even from division to division. It obviously depends, right from the start, on the number of cases filed. In Portugal, due to the strictness of court competence rules, certain social or economical factors may induce an exponential increase of processes in a given court. The greatest process concentration is found in the two major cities, Lisbon and Oporto (where most companies locate their headquarters) and in coastal counties, the most highly industrialized regions of the country and, subsequently, where most of the population reside.

Concerning the volume of entered processes, we can thus consider the coexistence, in Portugal, of “three distinctive judiciary countries”: Lisbon and Oporto, coastal counties and province counties. Referring to the year 2002, 125,879 civil cases$^{21}$ were filed in Lisbon, accounting for 26.4% of the country total, as well as 14,522 criminal cases (13.4% of country total); in Oporto there were 53,659 civil cases (11.3% of the country total) and 4,420 criminal cases (4.1% of the country total) filed; in Coimbra (a coastal county), 4,972 civil cases (1% of the country total) and 1,436 criminal cases (1.3% of the country total) were filed; and in Manceul-land (a small province county) 689 civil cases (0.1% of the country total) and 162 criminal cases (0.1% of the country total) were filed. It is clear that the total number of cases filed will have a direct impact on the average duration of processes in a court. For instance, in Lisbon, where, in 2002, as we just saw above, filed 26.4% of all civil cases, the average duration of the cases disposed of that year was of 915.5 days, whereas in Manceul-land, where merely 0.1% of all civil cases were entered, the cases disposed of took, in average, “only” 411.5 days to be decided.

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$^{20}$ In Portugal, law establishes a maximum number of vacancies for every career in each court.

$^{21}$ These civil processes do not include injunction procedures.
However, a change in a given factor, like the shift of headquarters of a mobile communications company to another county, as recently occurred in Oeiras, may cause, as mentioned before, an overload of a certain court.

Within criminal justice, courts near the main or most patrolled roads may rapidly receive a significant increase in cases related to certain motoring crimes. Still within criminal justice, a more recent phenomenon (related to mega criminal cases comprising many defendants and concerning corruption and drug crimes) is causing an increase of pending cases in some courts.

Thus, besides general measures aiming at decreasing the duration of proceedings, parallel measures specifically aimed at dealing with the backlogs of certain courts have to be taken. However, since there are no mechanisms for swift resolution of the piling of pending cases, the situation, isn’t, generally, timely resolved. This leads to its aggravation.

7. **Reforms in civil and criminal justice related to the management of caseloads**

The recent reforms introduced into the Portuguese judicial system to answer to the social demand for the law can be classified into four types: “de-judicialization” and decriminalization of certain conducts; reform of procedural rules; organization reforms; and alternative dispute resolution methods.

a) “De-judicialization” is the removal of certain disputes from the courts. These reforms were introduced in several areas, but the two most significant were concerned with divorce by

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mutual consent and inheritance (probate). In both reforms, the jurisdiction for these cases was transferred to administrative departments: the civil registry offices and the public notaries.

Recently, the “de-judicialization” process reached yet another domain: judgment execution. The reform approved early this year will take effect in September, creating yet another judicial career, the “execution officer”. His/Her sole power is concerned with the execution of the judgement, so that the role of judges in these proceedings is considerably reduced.

The two first reforms, and particularly the last one, have had and will have an important impact, by significantly diminishing the courts’ workload.

Within criminal justice, one of the measures aiming at fighting its current jam is the decriminalization of certain conducts, such as checks without funds and drug consumption (possession of no more than three individual doses).

b) The most important reforms focus on changes to the procedural rules. The Code of Civil Procedure establishes two main forms of procedure: common procedure and special procedure. The form of the procedure is adjusted to the claim made in the lawsuit. The special procedure is applied to the cases specifically stated in the Law (such as, for example, custody of minors and bankruptcies). The common procedure is applied to all the cases for which there are no special procedures.

The common declaratory procedure is ordinary, summary or very summary, according to the value of the claim. In the last two decades, some measures have been introduced aiming at simplifying procedures, such as the elimination of some joint pleadings, the simplification of appeals, the provision for notifying litigants and the creation of special declaratory actions.

To simplify debt recovery, an injunction procedure was created in 1993. This procedure was designed to allow the summary enforcement of debt claims. It applies whenever a claim is made to enforce a pecuniary obligation arising from a contract. The injunction procedure enables an invoice not signed by the debtor to become an executive instrument if it is not contested. The injunction replaces the need for an ordinary declaratory action to be brought and won before execution proceedings can commence. The aim of the reform was to introduce an alternative way of recovering debt, one complying with the principles of celerity, simplification and modernization.

The Code of Criminal Procedure, approved in 1987, proposes the construction of a procedural system, which, as far as possible, allows the goals of the justice system to be achieved through quicker and simpler procedures and de-bureaucratization. To that effect, the code predicts special measures, which include special procedures to deal with minor and medium offences, such as summary and very summary procedures. Other measures imply the suspension of the investigation if the defendant agrees to abide by several rules of conduct. Recently, another form of special procedure was added: the abbreviated procedure. The main reason for the introduction of these measures is to help the justice system to deal with different types of crime in different ways, not having to resort every time to the highly ritualistic and formal ordinary procedure, which is thus reserved for the more complex cases. Not only in Portugal, but in many other countries, special procedures are adopted to cope with the lengthiness of justice and the massification of a special kind of delinquency, and to help find new and more effective ways of re-socializing offenders, through new and broader ways of reaching consensus.

Unlike the special civil procedures described earlier, which are used whenever the value attributed to the process so requires, the special criminal procedures are used when the Public Prosecution Service confirms that all legal requirements are met and decides to use the appropriate special procedure. Among the reasons for the under-use of these special procedures we find: the legal requirements; the excessive bureaucratic procedures in the investigation, which are mainly responsible for the lengthiness of criminal justice; the lack of cooperation in

23 In Portugal, investigating judges are only responsible for certain decisions in the inquiry phase and for the proceedings in the instruction phase.
the functional relations between the criminal police and the Public Prosecution Service, and
the hardiness of a highly technical and bureaucratic judicial culture.

In fact, an average of nearly 86% of the criminal cases tried in the nineties followed the
ordinary procedure, although the Portuguese criminal system is flooded with cases concerning
minor and medium crimes (crimes punishable with fines or with prison sentences of less than
5 years), and the majority of these crimes do not need elaborate investigation (they are mainly
motoring crimes – driving without a licence and driving under the influence of alcohol).

c) Another kind of measures, in an attempt to respond to the increase in the demand on
courts, is related to the human and material resources, such as: establishment of new courts;
specialization of the courts (civil, criminal, small-claims) in the main counties; enlargement of
the courts’ staff (judges, state prosecutors and law and court clerks); and the computerization
of judicial services.

This way, the last judiciary organization reform (in 2000) established new courts of gen-
eral jurisdiction and new courts of specialized jurisdiction in previously existing counties, and
new special courts (small claims courts and misdemeanour courts). Court specialization is one
of the solutions found by the Portuguese judicial system to respond to the increasing amount
of litigation with more efficiency and better quality. However, as we shall see below, the lack
of staff with special training has undermined this effort.

d) Alternative dispute resolution methods are constantly referred to in speeches about the
reform of the judicial system. However, in Portugal, only recently the measures towards the
adoption of alternative dispute resolution methods had some effect.

Family mediation took its first steps only in 1998, with the creation of two offices cur-
rently regulated by the Ministry of Justice. This alternative method of dispute resolution re-
quires that both parties agree on submitting the case to an office of family mediation.

The Portuguese law allows the resolution of civil and commercial disputes by institu-
tional or ad hoc arbitration, through arbitration conventions, and by arbitrators chosen by the
parties. After the parties decide to take the dispute to arbitration they can only resort to judi-
cial courts if both of them agree. Over the last few years, the Ministry of Justice has certified
several institutional arbitration centres. Nevertheless, according to a survey conducted by the
Permanent Observatory on Portuguese Justice in 1999, at that time only one centre was in a
state of permanent and continuous activity. We think that the situation is a little better today,
but the impact of these measures on judicial litigation is not as strong as it could be.

Arbitration centres for the resolution of consumer litigation – consumer dispute arbitration
centres - were created in the main cities. These centres have been established by an agreement
between the City Hall, consumers associations and trade associations with the support of the
Ministry of Justice. They are able to resolve disputes of small and medium value, which cor-
respond to the first instance jurisdiction. According to the research conducted by the above-
mentioned Observatory, such centres have largely been successful. Nevertheless, they are not
a real alternative to the courts. They seem to be providing a new way of resolving many minor
disputes that were simply left unresolved in the past, and which constituted what we have
termed the large zone of «self-repressed litigation». For this reason, they can be regarded
more as a way of enforcing the right of access to the law and justice rather than as a measure
for reducing the number of actions coming to court.

e) Another measure concerns the establishment of justices of the peace in certain counties.
Justices of the peace are appointed by the Ministry of Justice, (compulsorily a law graduate)
and have jurisdiction over civil declarative actions, which amount to a value inferior of the
county court’s limited jurisdiction, and are related to certain matters, such as lease, condomin-
ium or real estate. Currently there is an ongoing debate about giving these justices of the
peace competence in small criminal cases.
8. **The reform of administrative justice**

As it was above mentioned, one of the most important reforms recently carried out within the Portuguese judicial system is the reform in the administrative contentious. The Statute of the Administrative and Tax Courts and the Administrative Courts’ Code of Procedure, brought a significant change to the administrative jurisdiction, by widening it and, thus, removing competencies from the ordinary jurisdiction. Thus, according to the laws now in force, administrative courts gained competence over the prevention and redress of the violation of constitutionally protected rights, regarding public health, environment, urbanism, land management, quality of life, cultural heritage and state property, when perpetrated by public entities, regardless of the kind of relation and of the civil responsibility of such entities or of public agents.

The new system has also brought important innovation regarding the organization of the administrative jurisdiction, which became very similar to the civil jurisdiction’s system. For example, a system of limited jurisdictions was introduced, which established specific rules of procedure and appeal from first instance decisions to higher courts.

On the other hand, before these statutes were in force, the Supreme Administrative Court and the Second Instance Administrative Court, although considered higher courts, were judging a significant number of first instance issues. With this reform, these first instance competencies were largely transferred to first instance administrative and tax courts, thus relieving the higher courts of appeals. The enlargement of the competence of administrative and tax courts will predictably result in an exponential increase in their workload. Hence, thirteen new administrative courts in several counties were established, as well as a new second instance administrative court.

That statute also assigned new and unique competencies to the presidents of these courts. As above mentioned, it is now their duty to allocate the processes to judges, according to given factors, such as the judges’ workload and availability, which weren’t previously considered. It is also the presidents’ duty to manage the courts’ human resources, ensuring an equitable allocation of cases to judges and supporting their work; to assure an equitable reallocation of cases, if there is a change in the number of judges; to guarantee the timeliness of proceedings and the respect for terms, with the possibility to temporarily replace judges in cases of long impediment; to request extra judges from a “special taskforce”; to temporarily assign judges from one department to another, in order to attend the temporary workload.

The reform has also created a new managerial instrument to deal with mass litigation. When more than twenty processes enter, concerning similar disputes, Administrative and Tax court presidents can decide to distribute only one and to suspend the others, pending the decision of the first.

In harmony with the new duties assigned to the courts’ presidents, the Statute of the Administrative and Tax Courts foresees a special taskforce of judges to assign to these courts. The assignment of judges occurs in situations of absence or impediment of the incumbent, vacancy, or incidental work overload, but only if the expected duration and workload fail to justify a proper replacement or the enlargement of the court roster.

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27 Normally, in the Portuguese judicial system, court presidents have very limited administrative competences. They can’t give direct orders to the administrative personnel of the court, but they can coordinate their efforts and exercise minor disciplinary control. They can supervise the automatic proceedings that are established by law to distribute cases by the courts divisions and to make annual reports about the courts performance.
The statute also foresees a court administrator, for first instance administrative courts, and a management board (formed by the court’s president and vice-presidents, the court secretary and the heads of administrative and financial support services), for the higher courts.

The statute also assigns new duties to the High Council of Administrative and Tax Courts concerning the management and administration of courts and cases. Within such duties, the yearly establishment of a maximum number of processes to assign each judge stands out; the maximum admissible term for the necessary procedural actions (as far as not foreseen by law); the management of the special taskforce; and the establishment of allocation criteria for the cases within the administrative courts.

Another innovative measure concerns the possibility of appeal to arbitration and the possibility to establish permanent arbitration centres for the settlement of litigations regarding contracts, civil responsibility of the state, public service, social and urbanistic public protection systems, which will only gain jurisdiction over the ministries which so decide. After this decision, public administration services are obliged to submit to arbitration if the plaintiff so requires.

In what concerns the organization and management of this jurisdiction’s courts, the statute foresees the informatization of all of the proceedings and also the digitalisation of all briefs and documents the parties present in paper. This way, it is now compulsory to present all briefs electronically digitalized or to have them digitalized by the clerk of the court’s office, which allows the consultation of the processes in the terminals available in all judicial clerk of the court’s offices, and also Internet access through qualified electronic signature. For this purpose, there will be created a permanently updated electronic file containing all data concerning consultation clearances, access levels and digital certification.

Judges and judicial clerks should also perform procedural acts using electronic support with advanced electronic signature certification.

Human resource management provides for a personal accountability of the clerks of court for the progress of the cases assigned to them. These clerks are also responsible for conducting and supervising the activity of the bailiffs, allocating them the necessary tasks to ensure the proper progress of proceedings, regarding each bailiff’s workload and individual abilities.

The reform of the administrative justice introduced new and more efficient methods to internally organize the courts and to allocate cases to judges within the court. Due to these innovations it has some potential to strengthen the quality of justice and to transform the existing organizational culture among judges and court staff. However, the reform of the administrative justice has been implemented only three months ago. Time has been too short to be certain of its consequences, especially concerning changes in organizational culture. Adding to this difficulty there are, presently, as far as we know, no monitoring studies.
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