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## When the Court Buildings Close: The Use of Technologies During COVID-19 in Portugal

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ABSTRACT

The coronavirus outbreak showed the critical importance and usefulness of a robust technical infrastructure and end-to-end digital processes in the judicial system. Although some application difficulties and limitations were observed during this crisis, the modernization of the Portuguese judicial system was a key element to safeguard the continuity of the functioning of courts. This short article aims to analyse the implementation and use of technologies in the Portuguese courts, as an alternative mode of delivering and maintaining court service within the context of the COVID-19 crisis. For this purpose, several steps are made, namely the characterization of the modernization level of the Portuguese judicial system and the collection and critical analysis of the legal framework, concerning the response to the COVID-19 pandemic by the judicial bodies of governance. Additionally, the analysis relies on the results of a questionnaire and interviews applied to the judicial professions and on official statistical information regarding the functioning of Portuguese courts during the periods of confinement. Final remarks will preview different paths for the future needs of courts in terms of upgrading the use of technologies to contribute to a better, swift, fair, and trustworthy justice.

KEYWORDS

*Courts; COVID-19; Technologies; Courts' Performance; Portugal*

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INTRODUCTION

The pandemic posed substantive challenges to traditional court procedures, and more broadly, to the judicial system, with unprecedented impacts on the day-to-day work of the legal and judicial professions. Two of the main challenges were: maintaining a sufficient level of service while the traditional courts were closed or partially closed; and the subsequent backlog of cases that was accumulating while courts were not able to handle their normal workload.<sup>1</sup> Throughout the world, courts have attempted to address the pandemic crisis in various ways. Some closed their buildings entirely, others

<sup>1</sup> See Richard E. Susskind, *The Future of Courts*, THE PRACTICE, 2020, at 1.

remained partially open, but in both situations dealing only with urgent cases. Nonetheless, all the countries had to move swiftly to deliver justice remotely and through online platforms.<sup>2</sup> The coronavirus outbreak showed the critical importance and usefulness of a robust technical infrastructure and end-to-end digital processes in the judicial system and contributed to the acceleration of the uptake of various technologies, especially videoconference, in the justice systems of numerous countries.

In Portugal, following the World Health Organization [W.H.O.] declaration of the COVID-19 outbreak as an international public health emergency and the guidelines released by the Portuguese National Health Institution [hereinafter D.G.S.], a set of organizational, procedural, physical and technological measures was adopted by the Portuguese judicial system to ensure the safety and health of judicial professionals and users, while maintaining the functioning of Portuguese courts. In light of the partial closure of court buildings during the height of the pandemic, judicial system responses relied strongly on the use of technologies to safeguard the continuity of the functioning of justice within the imposed restrictions. This article aims to analyse the application and use of technologies in Portuguese courts as an alternative way of delivering and maintaining court service in the context of the COVID-19 crisis. In particular, it aims to: (1) identify the measures adopted, with a special focus on the technological measures; (2) analyse the use and adequacy of the technologies during the first confinement between March and May 2020; and (3) analyse the courts' performance during 2020.

For this purpose, we will first present a brief analysis of the judicial system's responses to the COVID-19 pandemic, focusing on the use of technologies. Secondly, the discussion will rely on the results of an online questionnaire applied to the judicial professionals, recurring simultaneously to some illustrative excerpts of interviews conducted with judicial professionals. And thirdly, we will consider the official statistical information regarding the court flow in the Portuguese courts during 2020. This work was developed within the research project Q.U.A.L.I.S. - Quality of Justice in Portugal Impact of working conditions in the performance of judges and public prosecutors [hereinafter Q.U.A.L.I.S.], which aims to examine the working conditions of judicial professionals in Portugal, evaluating their impact on professional performance and, consequently, on the quality of justice. The prevention and control measures of the COVID-19 infection had strong implications for judicial professionals, affecting their working contexts and the performance of courts. It also accelerated the introduction of multiple changes in diverse areas of its functioning, deeply disturbing several

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<sup>2</sup> *Contra* O.S.C.E. OFF. FOR DEMOCRATIC INST. & HUM. RTS., THE FUNCTIONING OF COURTS IN THE COVID-19 PANDEMIC: A PRIMER 20-21 (2020).

dimensions of the working conditions at courts and the “traditional” way in which justice was delivered to citizens.

## 1. PORTUGUESE JUDICIAL MODERNIZATION

The ability of the judicial system to manage the workload of courts and to maintain some functioning during lockdown required, among other things, that those involved have access to and are able to file and share documents electronically. And subsequently have access to an effective digital case management system.

In Portugal, the management of buildings, equipment and information technology is divided amongst different entities, such as the Directorate-General for the Administration of Justice [hereinafter D.G.A.J.]<sup>3</sup> and the Institute of Financial Management and Judicial Infrastructures [hereinafter I.G.F.E.J.]<sup>4</sup> of the Ministry of Justice; the Prosecutor General’s Office; the various High Councils (of the Judiciary, Administrative and Tax Courts, Public Prosecution and Court Clerks); and different intermediate management boards such as the County Courts Management Board.

The management of courts is thus dispersed over different entities sometimes with competing and overlapping competences. Studies have characterized the model of governance of the Portuguese judicial system and management of the courts as a rigid structure, with poorly coordinated, dispersed authority.<sup>5</sup> For example, the management of each judicial district’s court of first instance is carried out by a management board, composed of a presiding judge, a coordinating public prosecutor and a judicial administrator. Each district court has a small budget and has autonomy to distribute the budget and its execution. However, most of the expenses depend on the technical advice and previous approval of the D.G.A.J. and the I.G.F.E.J., decreasing the autonomy and responsiveness of the Management Councils and often preventing a timely response.<sup>6</sup>

<sup>3</sup> The Directorate-General of Justice Administration is a service of the Ministry of Justice tasked with ensuring operational support to the courts. D.G.A.J., <https://dgaj.justica.gov.pt/English/About-DGAJ> (last visited Mar. 16, 2022).

<sup>4</sup> The Institute of Financial Management and Judicial Infrastructures is in charge of several issues of a transversal nature to the Ministry of Justice, namely budget and financial, patrimonial and construction, technological infrastructures and information systems. I.G.F.E.J., <https://igfej.justica.gov.pt/Sobre-o-IGFEJ/Quem-somos> (last visited Mar. 16, 2022).

<sup>5</sup> See João Paulo Dias & Conceição Gomes, *Judicial Reforms “Under Pressure”: The New Map/Organisation of the Portuguese Judicial System*, 14 *UTHRECT L. REV.* 174 (2018). See also Giuliana Palumbo et al., *Judicial Performance and its Determinants: A Cross-Country Perspective*, *OECD ECON. POL’Y PAPERS*, June 2013, at 28, 29.

<sup>6</sup> See António Gonçalves, *Administrador judiciário: um ano na nova estrutura judiciária* [Judicial Administrator: One year in the new judicial structure], 27 *REVISTA JULGAR* [Rev. Julgar], 177-191 (2015) (Port.).

In relation to judicial modernization, in the past two decades, Portugal promoted several initiatives, such as the *Justica + Próxima* programme,<sup>7</sup> which encompasses the *Tribunal+* flagship project, as well as *Simplex +*, a cross-governmental modernization plan.<sup>8</sup> As part of the *Justica + Próxima* programme, Portugal is increasingly employing IT applications in the justice system, including for case management, e-filing, document management, digitalization of courtroom functions, human resources management tools, help desk and public information systems, in order to facilitate accessibility of justice, especially in courthouses. The digitalization (dematerialization) of case management and information made relevant documents easily accessible to different users - with the ability to read and annotate where deemed appropriate.

Over the past decade, Portugal has been investing in the dematerialization of case management and information, including the *Citius* electronic platform, which seeks to provide a single online solution for judges, public prosecutors, lawyers, solicitors, enforcement agents and insolvency practitioners. *Citius* involved the modernization of core I.T. systems in the courts, including judicial electronic processes from first instance courts to the supreme courts and more than 100 technological features in all Magistrate Information Systems.<sup>9</sup> A similar platform, the *Sistema de Informação de gestão dos Tribunais Administrativos e Fiscais* [hereinafter *S.I.T.A.F.*] has been developed in the administrative and fiscal jurisdiction, introducing digital transmission of tax proceedings from the administration to administrative and fiscal courts, an innovative feature. Recently, in order to facilitate the dematerialization process, the Ministry of Justice distributed laptop computers to all magistrates.<sup>10</sup>

Furthermore, the *Justiça + Próxima* programme envisages a series of measures, including strengthening court capacities for video conferencing, which aims to alleviate some concerns about the growing concentration and centralization of courts - associated with the distance between the courts and some population living in remote areas.<sup>11</sup> Since 2013, the Portuguese law foresees that witnesses, experts and parties may be heard

<sup>7</sup> See Paula Fernando, *Intertwining Judicial Reforms and the Use of ICT in Courts: A Brief Description of the Portuguese Experience*, 8 EUR. Q. POL. ATTITUDES AND MENTALITIES, no. 2, 2012, at 7.

<sup>8</sup> See generally O.E.C.D., *JUSTICE TRANSFORMATION IN PORTUGAL: BUILDING ON SUCCESSES AND CHALLENGES* (2020).

<sup>9</sup> In Portugal, the word “magistrate” refers to judges or public prosecutors, according to national legislation, more specifically the professional statutes.

<sup>10</sup> Ana Henriques, *Ministério da Justiça vai Substituir Computadores dos Magistrados. Juizes e Procuradores vão receber 3400 Portáteis Novos Ainda Este Ano, Para os Ajudarem no “Processo de Desmaterialização em Curso”*, [Ministry of Justice will Replace Magistrates’ Computers. Judges and Prosecutors Will Receive 3,400 New Laptops Later this Year, to Help them with the “Ongoing Dematerialization Process”], PUBLICO (Nov. 30, 2018, 7:43 PM), <https://www.publico.pt/2018/11/30/sociedade/noticia/ministerio-justica-vai-substituir-computadores-magistrados-1853118>.

<sup>11</sup> See Patricia Branco, *The Geographies of Justice in Portugal: Redefining the Judiciary’s Territories*, 15 INT’L J. L. CONTEXT 450 (2019).

by videoconference.<sup>12</sup> Under Portuguese civil procedural law, as a rule, witnesses and parties must be heard by video conference in the same hearing and from the district court of the area of residence, and experts of laboratories or official services heard by teleconference from their workplace.<sup>13</sup>

## 2. THE JUDICIAL SYSTEM RESPONSES TO THE COVID-19 PANDEMIC: THE UPTAKE OF TECHNOLOGIES

In the middle of March 2020, in response to the rapid spread of the coronavirus SARS-CoV-2 and following the first declaration of the state of emergency, the access to Portuguese court buildings was conditioned, and face-to-face/in-person court services and proceedings were severely restricted. Simultaneously, alternative ways of delivering court service were adopted or reinforced, namely, through the uptake of various technologies.<sup>14</sup>

The state of emergency was first declared on 18 March, by Decree of the President of the Republic 14-A/2020, based on a situation of public calamity.<sup>15</sup> After this declaration, a set of measures related to deadlines and procedural steps were taken with immediate repercussions on the functioning of the courts. Law 1-A/2020 of 19th March, amended by Laws 4-A/2020 and 4-B/2020 of 6th April, established that only urgent acts and proceedings, in which fundamental rights are at stake, would be carried out in person (e.g., proceedings concerning minors at risk or urgent guardianship proceedings or criminal proceedings with persons in detention).<sup>16</sup> Additionally, the use of digital

<sup>12</sup> See Código de Processo Civil [Portuguese civil procedural law code], (Law n.º 41/2013, June 26, 2013), art. 502 (Port.).

<sup>13</sup> See *id.*

<sup>14</sup> For a more detailed and global analysis of the measures taken by the Portuguese government/public authorities and the implications of COVID in fundamental rights see Centre for Social Studies, *Coronavirus pandemic in the EU – Fundamental Rights Implications*, FRA (2020), [https://fra.europa.eu/sites/default/files/fra\\_uploads/pt\\_report\\_on\\_coronavirus\\_pandemic\\_july\\_2020.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/pt_report_on_coronavirus_pandemic_july_2020.pdf).

<sup>15</sup> See Decreto do Presidente da República n.º 14-A/2020 de 18 de março [Decree of the President of the Republic 14-A/2020], <https://dre.pt/dre/detalhe/decreto-presidente-republica/14-a-2020-130399862> (Port.). For an overview of the legal framework on the state of emergency in Portugal see Vânia Magalhães, *Reflexões sobre o crime de desobediência em Estado de Emergência* [Reflections on the Crime of Disobedience in a State of Emergency], JULGAR ONLINE, MAR., 2020, <http://julgar.pt/reflexoes-sobre-o-crime-de-desobediencia-em-estado-de-emergencia/>.

<sup>16</sup> See Lei n.º 1-A/2020 de 19 de março [Act no. 1-A/2020 of 19 March] art. 7, 8, <https://dre.pt/dre/detalhe/lei/1-a-2020-130473088> (Port.). For an overview and analysis of the measures adopted in Portugal, in relation to the COVID-19 pandemic, which affected the judicial system, see, among other: Joaquim Oliveira Martins, *A Lei n.º 1-A/2020, de 19 de março – uma primeira leitura e notas práticas* [Act no. 1-A/2020 of March 19 – a first reading and practical notes], JULGAR ONLINE, MAR. 2020, <http://julgar.pt/a-lei-n-o-1-a-2020-de-19-de-marco-uma-primeira-leitura-e-notas-praticas/>.

tools was strengthened: any procedural acts were permitted through tele/video conference and the use of email instead of the telephone was recommended to seek information from courts.<sup>17</sup> The judicial proceedings were to be held, whenever feasible, through the appropriate means of long distance communication, namely by teleconference or video call. The proceedings were only to be carried out in person when this did not imply the presence of a higher number of persons than those foreseen by the health authorities' recommendations. It is important to note that the criteria concerning which proceedings were to be carried out in person or using digital platforms may not have been applied in the same way by all judges, as the clauses were too general and difficult to interpret.<sup>18</sup>

During this period, Decree no. 2-A/2020 made the adoption of the teleworking regime mandatory, whenever the nature of the work allowed it or the professional had risks of getting severe COVID-19 disease consequences due to prior health problems, as per the definition of the National Health Institution.<sup>19</sup> The electronic processing of files and the practice of non-urgent acts at a distance were only possible because most cases were already completely digitalized and available in the Citius and S.I.T.A.F. systems.

The implementation of these measures relied heavily, not only on the pre-existing technological infrastructure in Portuguese courts (such as the existence of complete digitalized judicial proceedings), but also on the provision of videoconferencing [hereinafter V.C.] solutions in the courts, such as the Cisco Webex Meetings tool. Although magistrates use portable computers with Virtual Private Network [hereinafter V.P.N.], which allows for remote access to the computer systems of justice, the survey carried out by the Association of Portuguese Judges, during the last two weeks of March 2020, showed that 70% of magistrates stated that it took longer to complete tasks remotely than under normal circumstances.<sup>20</sup> They point out two main reasons for the delay: (1) the fact that some files (notably: criminal and insolvency files) are not fully digitalized and (2) the difficulties in the remote connection. Nevertheless, a

<sup>17</sup> See Lei n.º 1-A/2020 de 19 de março [Act no. 1-A/2020 of 19 March] art. 7, <https://dre.pt/dre/detalhe/lei/1-a-2020-130473088> (Port.).

<sup>18</sup> Joaquim Oliveira Martins, (*De novo a Lei n.º 1-A/2020 - uma terceira leitura (talvez final?)*) [(*Again a Law 1-A/2020 - a third (perhaps final?) reading*)], JULGAR ONLINE, MAY, 2020, <http://julgar.pt/wp-content/uploads/2020/05/20200529-JULGAR-De-novo-a-Lei-1-A2020-uma-terceira-leitura-talvez-final-Jos%C3%A9-Joaquim-Martins-v2.pdf> (Port.).

<sup>19</sup> See Decreto n.º 2-A/2020 de 20 de março [Decree-Law no. 2-A/2020 of 20 March] art. 6, <https://dre.pt/dre/detalhe/decreto/2-a-2020-130473161> (Port.).

<sup>20</sup> Mariana Oliveira, *Juízes trabalham de casa, mas admitem dificuldades* [Judges work from home, but admit difficulties], PUBLICO (Apr. 3, 2020, 11:01 pm), <https://www.publico.pt/2020/04/03/sociedade/noticia/juizes-trabalham-casa-admitem-dificuldades-1910958> (Port.).

significant part of the participants of that survey considered a positive evolution of the experience over the first two weeks of the confinement in March 2020.

Additionally, following Law 4-A/2020, which reviewed the exceptional measures to fight the pandemic, providing for the carrying out of diligences in non-urgent cases through means of remote communication,<sup>21</sup> the Institute of Financial Management and Equipment of Justice of the Ministry of Justice made a video conference tool available to courts, supported on the Cisco Webex platform - the so-called “virtual courtrooms”. Nevertheless, I.G.F.E.J. recognized, in a technical note of 27th April 2020, a set of disturbances in the virtual sessions and issued recommendations to try to solve the problems.<sup>22</sup>

The availability of virtual courtrooms and the experience of their use has aroused several criticisms by different legal and judicial actors. At a press conference of 9th April 2020, the Vice President of the High Council of Judges, José Sousa Lameira, considered the 157 virtual courtrooms available in the first and second instance courts to be insufficient.<sup>23</sup> Later, the presiding judges of the county courts presented a joint complaint to the body responsible for providing this computer platform (I.G.F.E.J.), regarding technical problems that made several trials unfeasible, arguing that the virtual courtrooms did not work, or operated with major disabilities.<sup>24</sup> Also the President of the Bar Association, Luís Menezes Leitão, in the press release of 12th May 2020, highlighted the ineffectiveness of the existing platform to carry out virtual judgements, pointing out that it systematically failed and that it did not guarantee everything that was necessary for a trial (for example, ensuring that witnesses are not being influenced by third parties).<sup>25</sup>

After the end of the first period of the coronavirus state of emergency, a provisional and exceptional procedural regime for judicial proceedings was established, reopening the courts, ending the exceptional regime for the suspension of deadlines, and

<sup>21</sup> See Lei n.º 4-A/2020 de 6 de abril [Act no. 4-A/2020 of 6 April] art. 7, <https://dre.pt/dre/detalhe/lei/4-a-2020-131193439> (Port.).

<sup>22</sup> I.G.F.E.J., *Sessões de videoconferência. Nota técnica* (Apr. 24, 2020), <https://www.csm.org.pt/wp-content/uploads/2020/04/20200428-Videoconferencia-nota-tecnica.pdf>(Port.).

<sup>23</sup> Ana Henriques, *Tribunais Querem Retomar Actividade, mas Queixam-se de Não lhes Facultarem Meios Suficientes* [Courts Want to Resume Activity, but Complain for not Providing Them With Sufficient Resources], PUBLICO (Apr. 9, 2020), <https://www.publico.pt/2020/04/09/sociedade/noticia/tribunais-querem-retomar-atividade-queixamse-nao-facultarem-meios-suficientes-1911729> (Port.).

<sup>24</sup> Ana Henriques, *Salas de Audiência Virtuais Não Funcionam, Reclamam Juizes* [Virtual Courtrooms Don't Work, Judges Complain], PUBLICO (Apr. 23, 2020), <https://www.publico.pt/2020/04/23/sociedade/noticia/salas-audiencia-virtuais-nao-funcionam-reclamam-juizes-1913625>(Port.).

<sup>25</sup> See *Comunicado de Imprensa sobre a Reabertura dos Tribunais* [Statement of the General Council on the Security Conditions of Courts], ORDEM DOS ADVOGADOS [BAR ASSOCIATION] (June 8, 2020), <https://portal.oa.pt/ordem/dossier-covid-19/imprensa/a-reabertura-dos-tribunais/> (Port.).



returning to on-site discussion and trial.<sup>26</sup> However, the use of digital tools remained an authorized option whenever necessary, according to the health authorities' guidelines. And the homeworking regime continued to be an option, whenever the nature of the work allowed it, for situations of higher professional health risk, and when office spaces and work organization did not fill the guidelines of D.G.S. and of the Authority for the Working Conditions [hereinafter A.C.T.].<sup>27</sup>

### 3. WHEN THE COURT BUILDINGS CLOSE: TECHNOLOGIES AND PERFORMANCE IN/OF PORTUGUESE COURTS DURING COVID-19 PANDEMIC

In order to understand how the technologies were used by the judicial system to deliver and maintain court service in the context of the COVID-19 crisis, considering the limitations and potentialities unveiled, we are going to discuss part of the work developed within the research project Q.U.A.L.I.S.. Furthermore, we are going to look at the official statistical information regarding the functioning of Portuguese courts during the 2020 lockdown.

#### 3.1. A PICTURE OF THE FIRST COVID-19 LOCKDOWN: JUDICIAL WORKING AND TECHNOLOGIES

The research project Q.U.A.L.I.S. adopted an interdisciplinary and multi-method approach to analyse the working conditions of the judicial professions in Portugal (judges, public prosecutors and court clerks), aiming to evaluate their impact on professional performance, family-work balance and health, through the use, among others, of a questionnaire and interviews. Both the questionnaire and interviews focused on six dimensions related to working conditions, each of them including several items (besides professional characterisation): organizational; environmental; personal/individual working experience; work-family balance; health and well-being; and impacts of COVID-19 on working conditions. In this section, we present the results of

<sup>26</sup> See Lei n.º 16/2020 de 29 de maio [Act no. 16/2020 of 29 May] art. 6-A, <https://dre.pt/dre/detalhe/lei/16-2020-134762423>, (Port.).

<sup>27</sup> See Decreto-Lei n.º 79-A/2020 de 1 de outubro [Decree-Law no. 79-A/2020 of 1 October] art. 3, <https://dre.pt/dre/detalhe/decreto-lei/79-a-2020-144272529> (Port.).

the questionnaire related to the first COVID-19 lockdown and some illustrative excerpts of interviews.

### 3.1.1. PROCEDURES AND PARTICIPANTS

The questionnaire was online between October 1st and November 15th 2020, and was sent to all judicial professionals working in the courts (10978 on December 31st 2020) with no sampling procedure. The dissemination had the collaboration of the governing and management bodies of the judiciary (high councils) and other relevant entities of the justice system (professional associations and unions). In this analysis, we only take into consideration the results of the questionnaire applied to the judicial professionals of the judicial district courts (lower judicial courts), leaving outside higher judicial courts (appeal courts and the Supreme Court) and the administrative and fiscal courts.<sup>28</sup> There are twenty-three judicial courts of first instance, comprising 85% of the human resources working on all the judicial, administrative, and fiscal courts.<sup>29</sup> We had 1427 valid questionnaire responses from a universe of 9334 judges, public prosecutors, and court clerks from the judicial district courts (Table 1).

Judicial Profession	Universe <sup>30</sup>	Sample	% Responses
Judges	1268	223	17.6%
Public Prosecutors	1256	227	18.1%
Court Clerks	6810	977	14.3%
Total	9334	1427	15.3%

Table 1

The sample distribution by profession and sex follows the national distribution in the Portuguese courts. Court clerks comprised 65.2%, judges 20.1% and public prosecutors 14.7% of the respondents, which is similar to the distribution by judicial professions. Additionally, the respondents of the study sample were 62.6% female and 37.4% male, an over-representation of women which reflects the already known increasing feminization

<sup>28</sup> The Portuguese legal system contains two major jurisdictions: 1) ordinary; and 2) administrative and fiscal. The judicial courts deal with ordinary criminal and civil matters, whereas administrative and fiscal matters are heard in the separate administrative court system.

<sup>29</sup> D.G.P.J. JUSTICE STATISTICS, <https://estatisticas.justica.gov.pt/sites/siej/en-us/Pages/tribunais.aspx> (last visited Mar. 16, 2022).

<sup>30</sup> Reference data for the 31st December 2020. *Id.*

of the judicial and legal professions in Portugal (in a similar trend to what happens in other contexts) (Figure 1).<sup>31</sup>

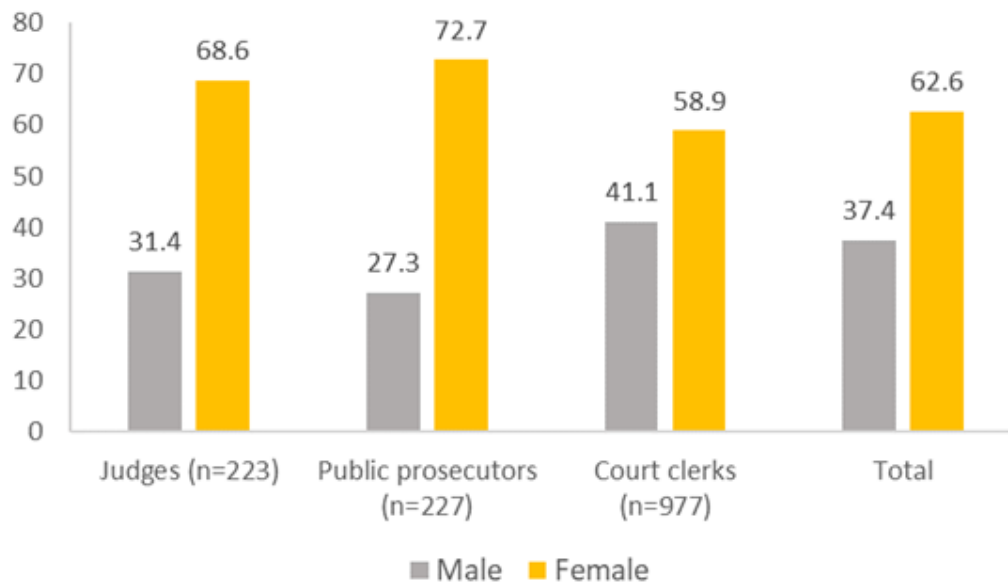


Figure 1: Sex by Judicial Profession and Total (%)

Respondents are aged between twenty and sixty-nine years old, with an average of approximately forty-eight years ( $M= 48.41$ ;  $SD = 9.58$ ). The figure shows differences in the age distribution of the judicial professions and a tendency to aging in the court clerks' group. In fact, the mean age of court clerks is higher than the one of judges and public prosecutors (Figure 2).

<sup>31</sup> See, e.g., ULRIKE SCHULTZ & GISELA SHAW, *WOMEN IN THE JUDICIARY* (2012).

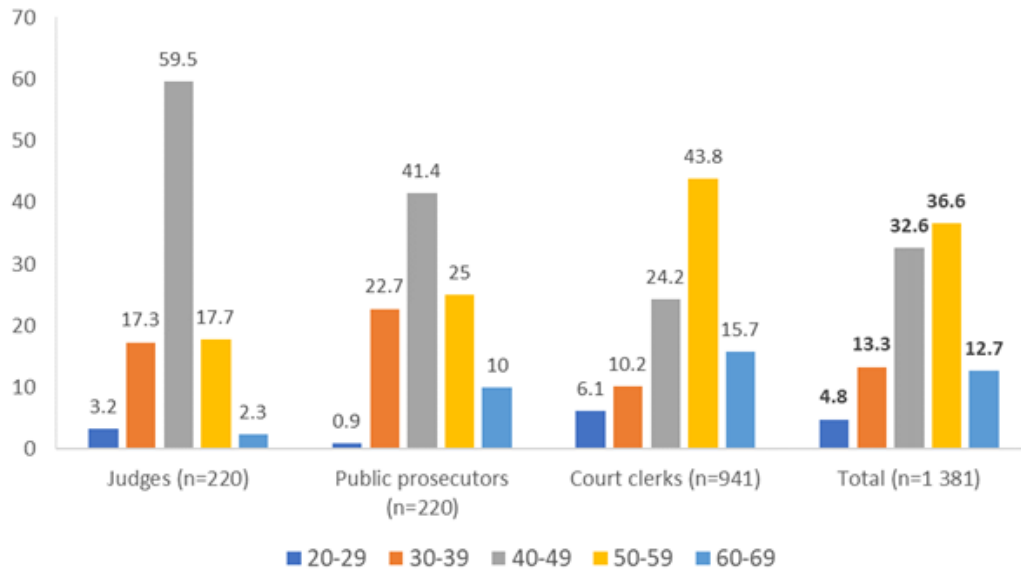


Figure 2: Age Groups by Judicial Professions and Total (%)

Seventy-three semi-structured interviews were conducted between April and July 2021 with judicial professionals (judges, public prosecutors, and court clerks) working in the diverse court buildings in Central Lisbon and Coimbra district courts (first instance) - which consists of the two Q.U.A.L.I.S.'s selected case studies. The Central Lisbon district comprises nine locations, including eleven buildings, where all the multiple services are distributed. The buildings are located in both margins of the Tejo River (metropolitan area of Lisbon), with a territorial competence embracing seven different municipalities. The Coimbra district includes twenty buildings spread over a large territorial area, which includes seventeen different municipalities. Despite the diverse dimensions of the buildings, and the nature of the services running in each of them, the interviews were conducted with the goal of ensuring that there was, at least, one interview per building. In most of the buildings, due to their dimensions, two or three interviews were conducted. In these last cases, it was mandatory that the interviews were from different professions.

Sixty-eight interviews occurred digitally, via Zoom, and five in person: four at the court's facilities and one at the Centre for Social Studies' facilities. Twenty-two judges, twenty-three public prosecutors and twenty-eight court clerks were interviewed. On average, the interviews were eighty-two minutes long. All participants signed an informed consent form in which they agreed to the recording of the interview. All interviews were transcribed and anonymized. To protect the anonymity of the interviewees, we only identified the city where they worked and their profession. This

form of anonymization will be presented in the interview quotations analysed in the following sections. The script of the interviews was built in close articulation with the questionnaire's structure, including a section related to the COVID-19 impacts.

### 3.2.1. PERCEPTIONS OF THE FIRST LOCKDOWN: INQUIRY RESULTS

The inquiry provides a picture of the use, application and performance of technologies in courts, during the first year of the COVID-19 pandemic, allowing the analysis of its capacity to respond and maintain the functioning of judicial services. In line with one survey carried out by the Association of Portuguese Judges, the results reveal that teleworking became the customary mode of working for judges and public prosecutors during the first period of confinement. In Portugal, between March and May of 2020, 78.2% of the judges and 64.7% of the public prosecutors' respondents worked at home most of the time. Of these, nearly 25% of the judges and 10% of the public prosecutors reported working exclusively from home. In the case of court clerks, the percentage of respondents who reported working at home most of the time was less than 17%. Actually, almost half of the court clerks' respondents worked mainly or exclusively in their workplace: the judicial court (Figure 3).

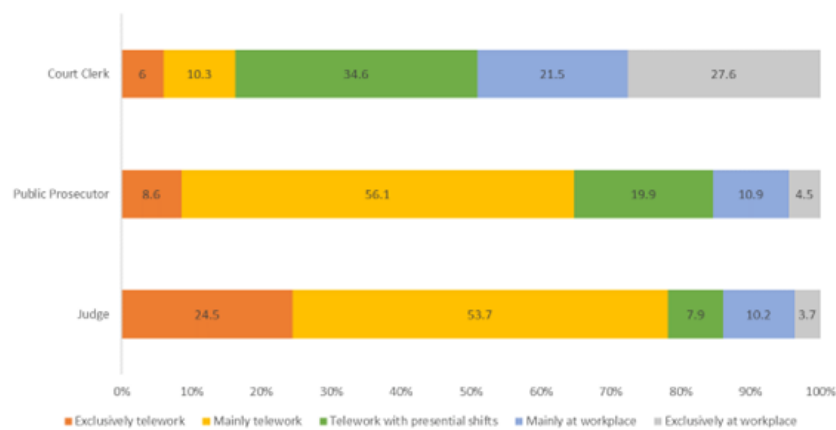


Figure 3: Work Regime During Confinement by Judicial Profession (%)

The asymmetries in the work regimes were also reported by the interviewees. The judge said:

The pandemic and the confinement have brought less work. I didn't stop coming to the court, even at the most critical phase, even if it was only once a week, because the court clerks who work with me were

here every day. I came to the court so that they would feel that their judge was not just at home waiting for this to pass. (Judge, Coimbra)

On the contrary, one of the court clerks interviewed, when asked about the workload during the covid-19 crisis, stated: “You know those ants we are used to seeing in those television documentaries, where you see the ant carrying a triple or quadruple weight of its size? That’s how a court clerk feels today”. (Clerk, Coimbra)

The work regime adopted during the lockdown is directly related to the technical resources available in the judicial district courts and the functions performed by each professional category, judges, public prosecutors and court clerks. On one hand, while all magistrates (judges and public prosecutors) had portable computers with V.P.N. before the pandemic, which allowed remote access to the computer systems of justice, the lack of portable computers for the court clerks hampered the implementation of teleworking in the case of these professionals. In the circular letter no. 6/2020, of March 26, issued by the D.G.A.J., it can be read:

It was decided to: 1. make all the requested laptops available immediately, when this number does not exceed 20, and in the other Courts to make 50% of the requested laptops available. 2. To authorize that the desktop computers used by court clerks at the Court can be transported and used at their home, whenever necessary for teleworking, since the number of portable computers made available by [D.G.A.J.] and District Courts / Administrative Courts is insufficient.<sup>32</sup>

The court clerks interviewed also reported the lack of equipment and resources like personal laptops to work at home. On the other hand, the work of employees still depends heavily on the handling of physical and non-digital documents, which makes it difficult to opt for teleworking, as mentioned by the interviewed court clerks:

When it was proposed to do teleworking, they immediately said that there were no laptops for everyone. My husband and I, and some of our colleagues in the court, are using their personal material. Other colleagues were given computers. As those of the magistrates were updated, they were given material so they could work from home. Those court clerks got what no one else wanted. Some [laptops] even

<sup>32</sup> D.G.A.J., Ofício circular n. 6/2020 [Circular letter n. 6/2020], 26 Mar. 2020, <[https://dgaj.justica.gov.pt/Portals/26/10-OF%C3%8DCIOS-CIRCULARES/2020/Of%C3%ADcio-circular%206\\_2020\\_%20teletrabalho%20nos%20tribunais.pdf?ver=2020-03-26-113047-120](https://dgaj.justica.gov.pt/Portals/26/10-OF%C3%8DCIOS-CIRCULARES/2020/Of%C3%ADcio-circular%206_2020_%20teletrabalho%20nos%20tribunais.pdf?ver=2020-03-26-113047-120)> (last visited March 16, 2022).

look like they were in World War II. They came with few conditions.  
(Clerk, Lisbon)

With regard to the equipment and digital platforms made available by the responsible judicial institutions to carry out procedures remotely in non-urgent cases, most respondents consider them acceptable. However, the group of workers who consider the equipment and digital platforms bad or very bad is bigger than to the group that considers it good or very good, a contrast that is more expressive of the computer equipment and internet connection (36.4% against 18% for the adequacy platforms to judicial activities, and 45.1% against 13.3% for the adequacy of the computer equipment and internet connection to platform requirements)(Figure 4).

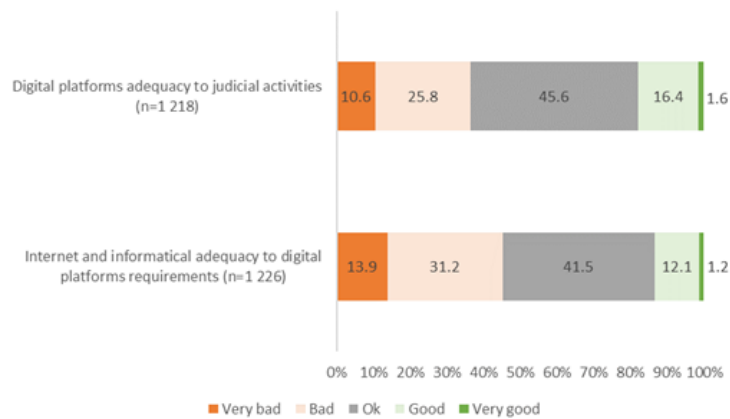


Figure 4: Equipment and Digital Platforms Adequacy (%)

The speedy adaptation to a range of technologies inevitably generated problems, such as poor internet connection, the lack of necessary equipment among court clerks and court users, systems that lacked the sophistication to cope with sudden demands, inadequate data protection, lack of training in the use of the new technology and lack of I.T.-assistance when difficulties arose.

Some colleagues struggled with the connection. The most difficult sometimes was the V.P.N. connection because when we were all accessing at the same time, we had no system. The system couldn't handle it. I started to realize that there were rush hours. For example, from 10 am to 12 pm it was impossible to work, you couldn't get into the system. I would wake up very early like 7 am and work until 10 am. After 18 pm they also worked well, but only until 19 pm. At that time, backup copies should start because the system was very slow and wouldn't work. From 10 pm onwards, it was wonderful. I

completely changed my schedule, changed the day to night and started working from 10 pm until 2 am/4 am. (Clerk, Lisbon)

These problems hampered the realization of procedural acts (e.g. trials and hearings) through videoconference, conditioning the functioning of the courts, as mentioned by the judge:

Now I have had fewer problems, but at the beginning it was very difficult to manage when I had people being heard by videoconference and others by Zoom. The problem with these technologies is that they often take longer. It takes a while to get in, then you don't get in, then you can't hear and, at the end, what is done in person in half an hour, perhaps, at Zoom takes an hour or more. (Judge, Coimbra)

The questionnaire also provides a picture of the working time and work intensity in the Portuguese Courts during the COVID-19 pandemic's confinement. According to the survey applied by the Eurofound, during the COVID-19 pandemic, many persons in employment were working fewer hours than usual.<sup>33</sup> In the Portuguese courts, during the first lockdown, the questionnaire pointed out expressive differences between the judicial professionals (Figures 5 and 6). Magistrates<sup>34</sup> who worked mainly from home during the pandemic were more likely to say their working hours, volume and pace decreased, compared to court clerks. More than half of the magistrates revealed that the working volume and pace had decreased or decreased significantly, while less than 20% of the court clerks reported a decrease in the volume and pace of work. Actually, almost half of the court clerks reported that the volume and pace of work had increased or increased a lot.

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<sup>33</sup> See, e.g., DAPHNE AHRENDT ET AL, *Living, Working and Covid-19* (2020).

<sup>34</sup> We jointly present judges and public prosecutors' changes in working time and intensity once there were not found significant statistical differences between them on those aspects and as explained above, they distinguish themselves from court clerks concerning work schedule and flexibility.



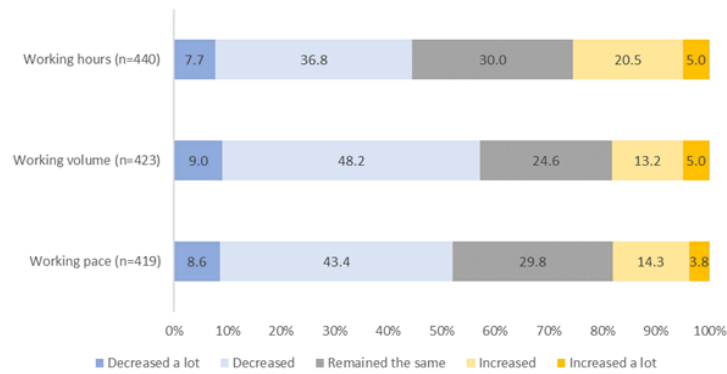


Figure 5: Changes on Working Time and Intensity Within Magistrates (%)

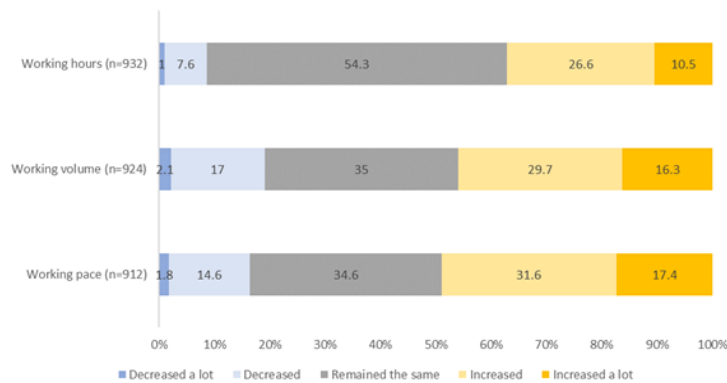


Figure 6: Changes on Working Time and Intensity Within Court Clerks (%)

With the courts partially closed and the activity reduced to urgent cases, the functions performed by the magistrates were the most affected, while the secretarial service could continue.

In practice, the proceedings were suspended, stopped a lot. My workload went down, there were judgments without effect because the processes were not urgent and the parties did not want to carry out the diligence and this allowed me to have some time, otherwise it was impossible. Having two children at home and working at a normal pace is impossible. (Judge, Coimbra)

I was talking to you about my work as a criminal investigation judge, in terms of urgent cases and prisoner cases, but there are more cases, aren't there? The investigation processes, for example (...), unless they involve arrested defendants or crimes of an urgent nature, are

not urgent and all these non-urgent processes have stopped. (Judge,  
Lisbon)

Nevertheless, as mentioned by the court clerk, the secretarial service was used mainly to clear up pending issues and files:

During the lockdown, we were even able to organize more things because the deadlines were suspended. It was great in that sense because we had a lot of secretarial services to do and we were able to do certain types of functions that [in a normal situation] we didn't have time for. We usually don't have time for everything. (Clerk,  
Lisbon)

### 3.2. THE PERFORMANCE OF COURTS DURING THE COVID- 19 PANDEMIC

In this Section, we analyse the official statistics regarding the performance of courts during the first year of the COVID-19 pandemic, which gives us an insight into the use of technologies, when the court buildings were closed. The official statistical information regarding the functioning of Portuguese courts was collected from the online database "Justice statistics",<sup>35</sup> produced by the Directorate General for Justice Policy [hereinafter D.G.P.J.], in the scope of the competences delegated to it by the National Statistical Institute. In order to understand the impact of COVID-19 and for comparative purposes, we collected performance indicators and case flow statistical information of the Portuguese first instance courts from 2018 and 2020. We opted for 2018 instead of 2019 because in the second quarter of 2019 the number of opened and closed cases was unusually high. According to D.G.P.J., this was a direct effect of internal transfers arising from the application of Decree-Law No. 38/2019, of March 18, which reorganized the judicial courts of first instance.

The official statistics<sup>36</sup> show a sharp decrease in the courts activity during the second quarter of 2020. In this period of general confinement, there was a decrease in the number of opened cases and in the number of closed cases. Furthermore, despite the growth in the number of opened and closed cases in the third and fourth quarters of 2020, after the reopening of the courts, the values are still far from those recorded in the same period of the reference year of 2018. COVID-19 confinements reduced the activities

<sup>35</sup> D.G.P.J., *supra* note 29.

<sup>36</sup> As mentioned above, we use the statistical data from 2018 instead of 2019, because in the second quarter of 2019, the number of opened and closed cases was unusually high. This was a direct effect of internal transfers arising from the application of Decree-Law No. 38/2019, of March 18, which reorganized the judicial courts of first instance.

in society and, therefore, there was a diminishing of potential conflicts that would arrive at courts. Additionally, following the Law 1-A/2020 of 19th March,<sup>37</sup> in judicial proceedings that are not urgent, limitation periods and prescription periods were suspended (e.g., the time limits for debtors to file applications to open insolvency proceedings were suspended), which may have also contributed to the decrease in the case filing.

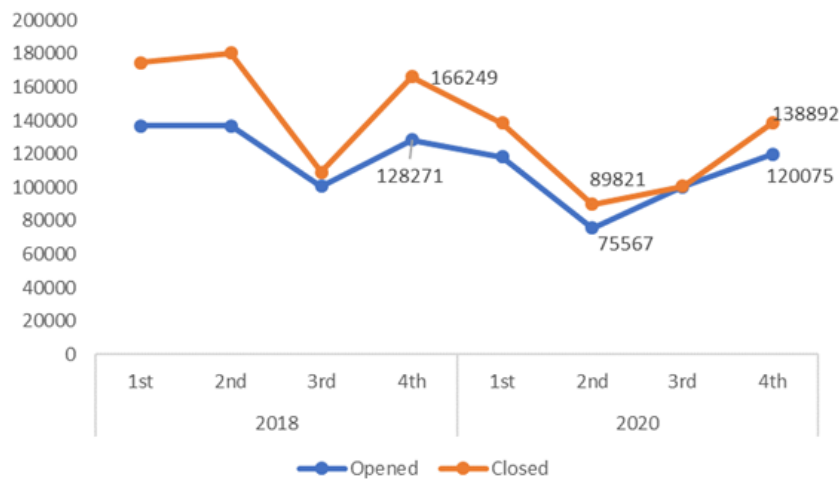


Figure 7: Case Flow at the Judicial District Courts by Quarter (2018 and 2020)<sup>38</sup>

In the annual statistics, the decrease of the case flow at the judicial district courts in 2020 stands out. In comparison to 2018, it was more expressive in the closed cases than in opened ones (Figure 7). While the number of opened cases reduced by about 20%, the closed cases decreased by 34.7%. Consequently, the clearance rate (C.R. indicator), i.e. the relationship between the new cases and completed cases within a period, in percentage, decreased in 2020. Despite the measures to maintain the functioning of Portuguese courts, while ensuring the safety and health of judicial professionals and citizens, the judicial system revealed difficulties in continuing with the proceedings. Thus, although any procedural acts were permitted through video conference and most cases are already completely digitalized and available in the C-platform, the results indicate that technologies were not used to their full capacity by the judicial professionals. The focus of this analysis was the global case flow at the Portuguese judicial district courts.

<sup>37</sup> Lei n.º 1-A/2020 de 19 de março [Act no. 1-A/2020 of 19 March] art.7, 8, <https://dre.pt/dre/detalhe/lei/1-a-2020-130473088> (Port.).

<sup>38</sup> D.G.P.J., *supra* note 29.

Nevertheless, it is important to note that in some civil law areas, such as in the enforcement procedures,<sup>39</sup> this general downward trend does not occur, which requires further analysis by the legal area in order to reach more concrete conclusions.

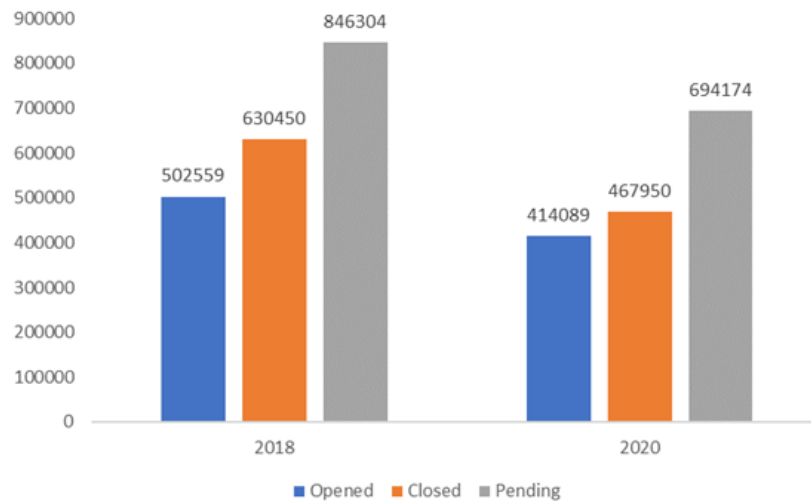


Figure 8: Case Flow at the Judicial District Courts<sup>40</sup>

## CONCLUSIONS

The rapid increase in the use of technologies to maintain some functioning during confinement was one of the most discussed aspects of the impact of COVID-19 on courts. The use of technologies in Portuguese courts was strengthened during the COVID-19 crisis, but it also benefited from the previous modernization efforts of the judicial system, namely, the dematerialization and digitalization of proceedings and files. Therefore, three main conclusions can be elaborated with respect to the impacts of COVID-19 on courts.

The first considers the decrease in the volume and pace of work of judicial professionals (especially judges and public prosecutors) and on the courts case flow which revealed, regardless of the measures adopted in order to maintain the courts' functioning, the limitations of the technologies available (hardware and software). Both

<sup>39</sup> Pedro Correia & Neuza Martins, *O Impacto da Pandemia COVID-19 no Desempenho Estatístico das Ações Executivas Cíveis: O que nos Dizem os Dados até ao Momento?* (Encontro de Administração da Justiça – EnAJUS 2021, October, 2021) [https://www.researchgate.net/publication/356288041\\_O\\_Impacto\\_da\\_Pandemia\\_COVID-19\\_no\\_Desempenho\\_Estatistico\\_das\\_Acoes\\_Executivas\\_Civeis\\_O\\_que\\_nos\\_Dizem\\_os\\_Dados\\_ate\\_ao\\_Momento](https://www.researchgate.net/publication/356288041_O_Impacto_da_Pandemia_COVID-19_no_Desempenho_Estatistico_das_Acoes_Executivas_Civeis_O_que_nos_Dizem_os_Dados_ate_ao_Momento)

<sup>40</sup> D.G.P.J., *supra* note 29.

were not enough to ensure an alternative way of delivering and maintaining court services in the context of the COVID-19 crisis. It was clear that the professionals'/courts' performance was severely conditioned during the first year of the COVID-19 pandemic, with the exception of the proceedings classified as "urgent" cases by law.

Secondly, one can conclude that the use of the new technologies (remote access to Citius, videoconference and other communication tools, among others), for any procedural act, was not spread equally amid judicial professionals. The evaluation of the available equipment and digital platforms during the first confinement showed that the speedy adoption and adaptation to a range of technologies inevitably generated problems. These included slow internet connection, lack of necessary equipment, systems that could not cope with the sudden demand, and the inexistence of previous training in the use of the technologies.

Lastly, the analysis of the multiple collected data evinced that the responses to the COVID-19 pandemic took place against a backdrop of challenges that Portuguese courts were facing for many years. The lack of adequate computers for court clerks and the difficulties in the implementation of the V.P.N. system, videoconference systems and virtual courtrooms hampered the implementation of teleworking. This was far more evident in the case of the court clerks, and conditioned the realization of procedural acts (e.g. trials or hearings) through videoconference, impacting severely on the functioning of the courts. Court clerks felt more difficulties in operating in the regime of teleworking, being forced to work in court facilities where the working conditions were far from satisfactory. On the other hand, judges worked mainly from home during the confinement and were more likely to state that their working hours, volume and pace decreased compared to court clerks who remained in the courts.

COVID-19 provoked several damages in the functioning of courts similarly to what occurred to other public services. But the rigid organizational and management structure, with competencies divided by multiple governmental and judicial entities, made it more difficult to react and adapt to the new circumstances. Within this pandemic context, it was of public knowledge that courts were slower to adapt and even slower to resume the "normal" activity after the confinement period. Not only is it not possible to characterize the litigation that remained outside courts with the existing restrictions, but it would take long for it to be possible to evaluate the impacts on the regular procedural processing of files on courts. The judicial professionals were also not prepared to adapt to the new technological context and demands, showing difficulties in ensuring the necessary productivity. To sum up, the pandemic "rupture" calls for a new paradigm on judicial organization, working contexts and technological tools (hardware

and software). The justice that citizens have a right to also calls for a changing judicial culture, where training, cooperation and articulation can be placed in a central position of professional duties. The “call for justice” cannot be suspended by any future pandemic, or justice will be seen more as a “virus” than the “solution” for people’s problems.