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The inefficiency of the Justice in Portugal: Causes and Consequences

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Abstract

Given the breach of trust that the justice system in Portugal is facing, it is fundamental to analyse the reasons why the judicial system is considered inefficient.

This study contributes to the identification underlying the inefficiency of justice in Portugal. Emphasized the importance of a reform in the Portuguese judicial system, emphasizing the concrete alternatives and resolutions carried out, making the framework with the European Judicial Systems: Efficiency and Quality of Justice.

It is important to carry out a survey with the objective of identifying the factors that contribute most to the inefficiency of Justice in Portugal by analysing the frequency of the most relevant contents enunciated by the participants. The survey consists of two parts: the first consists of the following socio-demographic variables: occupation, region, age, gender and remuneration; the second consists of an open question, to which participants can state which factors contribute most to the ineffectiveness of Justice in Portugal, enumerating them in order of importance, using the technique described by Bardin (1988).

The answers obtained were submitted to a content analysis with the aim of identifying the content underlying the inefficiency of Justice in Portugal, with 18 subcategories emerging according to the contents expressed by the participants.

Like any public service, entities of the judicial system should be accountable. By giving an account, one can gauge what will be wrong in one court or another, to the detriment of the volume of work that exists in them.

In this way, the way above all of simplification, justice will go to what really matters: efficiency, celerity and transparency.

Keywords: :justice, inefficiency, transparency, judicial systems;

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1. Introduction

The main objective of this study is to identify the factors that most contribute to the inefficiency of Justice in Portugal by analysing the frequency of the most relevant contents stated by the participants.

2. Methods and participants

2.1 Procedure

The participants who made up the sample of this preliminary study were previously contacted in order to answer a questionnaire about the factors underlying the inefficiency of Justice in Portugal, guaranteeing the anonymity and confidentiality of the data. Subsequently, the questionnaires were sent by e-mail and by letter to their respective workplaces - courts, law firms and universities. The answers were obtained via e-mail, by letter and, in last resort, by telephone. The period between the initial contact and receiving the answers lasted approximately 9 months, between May 2014 and January 2015, and comprise only the three geographic regions of continental Portugal - North, Centre and South.

2.2 Participants

The sample of this study was constituted by 80 people, belonging to the three most important professional classes of the functioning of the judicial system - judge, lawyer and bailiff. Of the contacted people, 48 (60% of the sample) answered the questionnaire completely, 26 (32.5%) refused to respond and 6 (7.5%) incompletely answered the questionnaire.

2.3 Material

The tool used to collect the answers was designed by the author of this study; a questionnaire, with two parts, specifically intended for the systematic survey of the factors that contribute most to the inefficiency of the Portuguese Justice System. The first part consists of the following sociodemographic variables: profession, region, age, gender and remuneration. The second, consists of an open-ended question, in which participants can state the factors that most contribute to the inefficiency of Justice in Portugal, listing them in order of importance.

2.4 Content analysis

For the development of the content analysis, it was used the technique described by Bardin (1988) under the name of thematic or categorical analysis, which consists of the decomposition of texts into units and then classification by regrouping. It is a constructivist method, in the sense that relevant categories are going to be created to circumscribe the object of study that one intends to know (Epstein, 1986).

According to Bardin (1977) the organization of the content analysis involves the following steps:

- **Pre-analysis** - consists of the organization of the material, operationalization and systematization, choice of documents, formulation of hypotheses, objectives and elaboration of indicators and initial reading;

- **Examination of the material** - exploratory analysis that consists in codifications and classifications, and is characterized by being a long and tedious phase and requires the work of a team, in which its members act as judges of the work of codification and thematic classification;
- **Treatment of the obtained results and interpretation** - consists of the tabulation and application of descriptive techniques of analysis.

The answers obtained in the open question were subjected to a content analysis with the aim of identifying the reasons underlying the inefficiency of Justice in Portugal (*i.e.*, motives, elements, factors, characteristics or dimensions).

The system of subcategories used was constructed "*a posteriori*", from the initial reading and survey of the contents contained in the *corpus*, coming from a pre-category, which corresponds to the question formulated in the tool used. Starting from this category, 18 subcategories emerged according to the contents expressed by the participants:

- **Bureaucracy** – aggregates the items related to aspects of administrative nature
- **Excessive legislative output** - aggregates the items related to aspects of a legislative nature
- **Slowness**- aggregates time related items
- **Lack of staff** - aggregates the items related to the shortage of human resources
- **Lack of working conditions** - aggregates the items related to the lack of physical and material resources
- **Lack of preparation / training of judicial staff** - aggregates the items related to formative aspects
- **Inadequacy of IT resources in the judicial system** - aggregates the items related to aspects related to the computerization of the system
- **Excess of processes** - aggregates the items related to the amount of processes
- **Legislation inadequate to reality** - aggregates the items related to legislative mismatch against everyday reality
- **Poor collaboration between judicial staff** - aggregates the items related to the collaboration between the various actors of the judicial system
- **Lack of work incentives** - aggregates the items related to the promotion of greater productivity
- **Excessive use of dilatory procedures** - aggregates the items related to the use of legislative files that cause greater slowness
- **Little use of alternative means of conflict resolution**
- **Complete unaccountability of legal practitioners** - aggregates the items relating to the non-accountability for non-compliance of established rules or deadlines
- **Inequality of access to justice** - aggregates the items related to inequality in access to Justice by citizens
- **Politicization of the judicial system** - aggregates the items related to the politicization of the judicial system or legislative policy
- **Acceptance of the sense of justice of the decision** - aggregates the items relating to the acceptance of decisions
- **Lack of knowledge in access to justice** - aggregates the items related to lack of knowledge in access to Justice

A further 13 items were counted, however, they can not be grouped in any of the other categories mentioned above. The items are: *lack of hierarchical power of magistrates over the judicial staff (1); cultural attitude of disrespect towards Justice (1); distribution of courts at a district court level (2); restrictive operating hours (2); complexity of valid evidence means (2); sensationalism of the media and little technical accuracy (2); citizens (1); mentality/education (1); and the entire system (1)*.

2.5 Statistic Methods

Descriptive tests (frequency table) were used for the characterization of the sample and frequency analysis of the identified subcategories, comparative tests (comparison test of averages, *t-Student* and one-way *Anova*) to compare averages between groups and crosstabs to perform percentage analysis between variables. For the statistical analysis SPSS was used.

3. Results

Of the 80 people initially planned to be contacted for this phase, only 48 (60% of the contacted people) responded fully to the questionnaire. Of the remaining 40%, 26 people refused to answer (32.5%) and 6 (7.5%) answered the questionnaire incompletely.

Sample characterization

It was only taken into account the 48 participants who answered the questionnaire in their entirety, of which 27 (56.3%) were female and 21 (43.8%) were male.

In regards to the professional category, as can be seen in Table 1, there was a higher rate of adherence by the lawyers (45.8%) compared to the bailiffs (29.2%) and the judges (25%). This discrepancy in values could be related to the ease that the professional class of lawyers has shown in being approached when compared to the other two professional classes.

Table 1. Characterization of respondents by professional category

Professional Category	n	%
Judge	12	25
Lawyer	22	45.8
Bailiffs	14	29.2
Total	48	100

Regarding the demographic region, there was no great discrepancy between the values found in the three regions. However, a slightly higher percentage in the North region (37.5%, $n = 18$) can be observed in comparison to the Centre (33.3%; $n = 16$) and South (29.2%, $n = 14$) regions, which can be directly related to the area of residence of the author of this study.

The average age of the respondents is 37.88 ($SD = 8.35$), exhibiting an amplitude of 36 years of age (minimum = 25, maximum = 61). It shows an asymmetry (0.54) and a kurtosis coefficient (0.04) within the normality criteria, thus indicating that the values of this variable distribute normally. When

analysing the average age by gender, it was found that the average age of males ($M = 40.24$) was slightly higher than that of females ($M = 36.04$), but there was no statistically significant differences between the genders ($\text{sig.} = 0.08$; $gI = 46$). In turn, the analysis of the average age by professional category revealed statistically significant differences ($\text{Sig.} = 0.02$; $F = 3.96$; $gI = 2$) between the three groups, the highest being that of bailiffs (cf. Table 2). After the analysis *post-hoc* with the Scheffe test, there was only one statistically significant difference in average age between the group of bailiffs and the group of lawyers ($df = 7.21$; $\text{Sig.} = 0.03$; $CI = 95\%$). Finally, in relation to the average ages by demographic region, although there were no statistically significant differences between the three groups, the South was the region that revealed a higher average age ($M = 40.07$) and a greater age dispersion ($SD = 11.34$) when compared to the other two regions (cf. Table 2).

Table 2. Average age of respondents according to gender, professional category and demographic region

Sociodemographic characteristics	Age	
	M	SD
Gender		
Female	36.04	7.46
Male	40.24	9.01
Professional Category		
Judge	39.58	10.68
Lawyer	34.50	7.32
Bailiffs	41.71	5.59
Demographic Region		
North	37.44	7.63
Centre	36.44	5.85
South	40.07	11.34

In regards to remuneration, it can be seen that the lowest wages (≤ 2000 euro) happen more frequently in the women's group (20 women vs 11 men). Whilst, higher wages (≥ 2001 euro) tend to be more frequent in the men's group (10 people) than in the women's group (7 people) (cf. Table 3).

Table 3. Average Remuneration of respondents by gender, professional category and demographic region

Sociodemographic characteristics	Monthly Remuneration								
	≤ 1000 euro		1001-2000 euro		2001-3000 euro		≥ 3000 euro		Total %
	N	%	N	%	N	%	N	%	
Gender									
Female	8	29.6%	12	44.4%	3	11.1%	4	14.8	100%
Male	3	6.3%	8	16.7%	5	10.4%	5	43.8%	100%
Professional Category									
Judge	0	0%	3	25%	3	25%	6	50%	100%
Lawyer	5	22.7%	9	40.9%	5	22.7%	3	13.6%	100%
Bailiff	6	22.9%	8	41.7%	0	0%	0	0%	100%

Geographical Region									
North	8	44.4%	6	33.3%	4	22.2%	0	0%	100%
Centre	2	12.5%	8	50%	2	12.5%	4	25%	100%
South	1	7.1%	6	42.9%	2	14.3%	5	37.5%	100%

If we take into consideration the professional class, the highest salaries belong to the classes of judges (9 people) and lawyers (8 people), with no case being registered in the class of bailiffs. The number of judges earning more than 3000 euro is double that of lawyers (6 people vs 3 people). On the other hand, when analysing the salaries by wage category, it is possible to determine that remunerations between 1001 and 2000 euro are those that occur more frequently (20 people).

Regarding the identified subcategories that may contribute the most to the inefficiency of Justice in Portugal, the ones that have a greater weight for the 48 participants of the sample are the **bureaucracy**, the **excessive legislative production**, **slowness**, **lack of staff**, **lack of working conditions**, **inadequacy of IT resources in the judicial system**, **lack of preparation / training of judicial staff**, **excess of processes** and the **legislation inappropriate to reality** (cf. Table 4).

Table 4. Frequency of subcategories referred to by total number of respondents and respective percentages

Subcategories	N = 48	
	N	%
Bureaucracy		
Yes	36	75.0
No	12	25.0
Excessive legislative production		
Yes	28	58.3
No	20	41.7
Slowness		
Yes	26	54.2
No	22	45.8
Lack of staff		
Yes	26	54.2
No	22	45.8
Lack of working conditions		
Yes	25	52.1
No	23	47.9
Inadequacy of IT resources in the judicial system		
Yes	21	43.8
No	27	56.3
Lack of preparation/training of the judicial staff		
Yes	21	43.8
No	27	56.3
Excess of processes		
Yes	13	27.1
No	35	72.9
Legislation inadequate to reality		
Yes	10	20.8
No	38	79.2
Poor collaboration between judicial staff		
Yes	9	18.9

No	39	81.3
Lack of work incentives		
Yes	7	14.6
No	41	85.4
Excessive use of dilatory procedures		
Yes	7	14.6
No	41	85.4
Little use of alternative means of conflict resolution		
Yes	6	12.5
No	42	87.5
Complete unaccountability of legal practitioners		
Yes	6	12.5
No	42	87.5
Inequality of access to Justice		
Yes	6	12.5
No	42	87.5
Politicization of the judicial system		
Yes	5	10.4
No	43	89.6
Acceptance of the sense of justice of the decision		
Yes	5	10.4
No	43	89.6
Lack of knowledge in access to Justice		
Yes	4	8.3
No	44	91.7

On the other hand, the subcategories with the lowest contributory weight for inefficiency were those whose percentage values (marked in red in Table 4) were less than 20% of the total number of the sample. This means that more than 4/5 of the sample did not express any content in relation to these subcategories, thus constituting a very significant indicator of the effective contributory weight they have to the participants

When analysing the subcategories having as a base the total number of units of analysis (261 records), it is possible to observe that the most representative subcategories are the **bureaucracy** with 36 records (13.79%), the **excessive legislative production** with 28 records (10.72%), the **slowness** and the **lack of staff** - both with 26 records (9.96%), the **lack of working conditions** with 25 records (9.57%), the **lack of preparation/training of judicial staff** and the **inadequacy of IT resources in the judicial system** with 21 records (8.04%) respectively, the **excess of processes** with 13 records (4.98%) and, finally, the **legislation inadequate to reality** with 10 records (3.83%) (cf. Table 5).

Although the contributory weight of each of these nine subcategories - percentage wise, is substantially lower when compared to the percentages observed when analysing only the total number of participants - suggesting that the weight of each of these subcategories is better distributed, it is possible, however, to note that the order of these subcategories by degree of importance, based on the total number of units of analysis, coincides precisely with that observed when the total number of participants is used. Consequently, since these results show such a high consistency between analysis (compatibility = 100%), they turn out to be reliable indicators in regards to the factors that contribute most to the inefficiency in Justice (cf. Table. 5)

Table 5. Frequency of the subcategories referred to and respective percentages compared to the total number of units of analysis

10	No. of units of analysis – Total	Subcategories	No. of analysis units – Category	
			Freq.	%
Inefficiency of Justice	261	Bureaucracy	36	13.79
		Excessive legislative production	28	10.72
		Slowness	26	9.96
		Lack of staff	26	9.96
		Lack of working conditions	25	9.57
		Lack of preparation/training of judicial staff	21	8.04
		Inadequacy of IT resources to the judicial system	21	8.04
		Excess of processes	13	4.98
		Legislation inadequate to reality		
		Poor collaboration between judicial staff	10	3.83
		Lack of work incentives	9	3.44
		Excessive use of dilatory procedures	7	2.68
		Little use of alternative means of conflict resolution	7	2.68
			6	2.29
		Unaccountability of the judicial staff		
		Inequality of access to Justice		
		Politicization of the judicial system	6	2.29
		Acceptance of the sense of justice of the decision	6	2.29
		Lack of knowledge in access to Justice	5	1.91
		Total	5	1.91
			4	1.53
			261	100

On the other hand, the total percentage of subcategories less referenced is substantially lower (21.02%, Freq = 55) compared to the total number of the most significant subcategories, that correspond to 78.89% (Freq = 201) of the total value.

4. Conclusion

It is consensual that the constant reforms within the judicial system are related with issues, not from now, but from years ago and up to this point.

Why this slowness?

The issues relate to inefficiency, ineffectiveness, community education, sociological or even financial aspects, and, more controversial, quality of decisions.

It is also consensual that one of the main problems of the Portuguese courts arise from deficiencies in the organization and management of the justice system.

An effective answer to the issue requires a broader reform agenda, which must undergo several changes, namely in the organization and internal functioning of courts, in the working methods and in the judicial culture.

In fact, the path is outlined. But the layout is long and painful. As can be seen from what was previously stated, the change must operate from several fronts.

The state of Justice must reflect the state of consciousness and mentality of a community.

What is to be expected of a community without faith or belief in a fast, effective and efficient Justice?

Information on alternative means of dispute resolution should be promoted, as this is the path to the solution at the citizen's hand. The fast and efficient way in resolving certain cases, where their overwhelming majority should never reach a court of law, ends up diminishing the true importance that must be given to them.

Of course, this is not done without national awareness and mentalization. It is the question of "believing again" that it is urgent to energize.

Along with all this, like any other public service, the judiciary system must be held accountable. Only in this way, will we be able to gauge the system's ineffectiveness, without neglecting the workload of the courts. The way will be done by simplifying the judicial machine, debureaucratizing, depoliticizing and streamlining procedures using new technologies. Justice must be efficiency, fast and transparent.

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