



## ACADEMIC ARTICLE

# Judicial Responses to COVID-19 Attack: Impacts on the Working Conditions of Portuguese Courts

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The coronavirus outbreak shows the critical importance of health and safety at work measures and working conditions in all sectors of activity, including the judicial system. The COVID-19 crisis put pressure on the Portuguese judicial system to implement new procedures and practices in a very short time, which severed and exposed some previous identified fragilities of the judiciary organization and management of the judicial system, with consequences in the working conditions of the judicial professionals. The main objective of this article is to analyse the response(s) to the coronavirus crisis concerning the working conditions in the Portuguese judicial system. The pursuit of this objective involved the collection and analysis of legislation and regulation and online news, opinion pieces and press releases from the judicial associations and public official institutions from February to June 2020 concerning the response to the COVID-19 pandemic in the judicial system.

**Keywords:** COVID-19; Working conditions; Judicial professions; Courts; Portugal

## 1. Introduction

The COVID-19 crisis put pressure on the Portuguese judicial system to implement new procedures and practices in a very short time, which severed and exposed some previous identified fragilities of the judiciary organization and management of the judicial system, with consequences in the working conditions of the judicial professionals. Following the World Health Organization (WHO) declaration of public health emergency of international concern and the guidelines of the Portuguese National Health Institution, a set of organizational, procedural, technological and physical measures were taken with immediate and long-term

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repercussions on the functioning of the courts and in the day-to-day work of the judicial professionals, namely judges, public prosecutors and law clerks.

There is a general resistance to viewing courts as working spaces and judicial professionals as 'workers' or 'employees'. Increasingly, however, there is an acknowledgement that judges, public prosecutors and law clerks are not just judicial officers, representatives and servants of the State. They are also individuals with particular needs and requirements.<sup>1</sup> In the last decade as new models of judicial management and judicial reforms were implemented, studies on the judicial professions focusing on working conditions and risks are slowly emerging.<sup>2</sup> This empirical literature on judicial professionals' working conditions and risks point to a general dissatisfaction with working conditions, particularly the intensity of work and court facilities,<sup>3</sup> and simultaneously to high job satisfaction, especially magistrates.<sup>4,5</sup> These recent researches show indications of stress and burnout in judicial professionals worldwide, with consequences not only on their health status, but also on their work capacity.<sup>6</sup>

The coronavirus outbreak reinforced the critical importance of health and safety at work measures and working conditions in all sectors of activity, including the judicial system. The main objective of this article is to analyse the institutional responses to the coronavirus crisis concerning the working conditions in the Portuguese judicial system. More specifically, it aims to: (1) Identify the COVID-19 infection prevention and control measures adopted in courts; and (2) Identify the challenges and impacts of the judicial responses to COVID-19 in the working conditions of the judicial professionals (judges, public prosecutors and law clerks).

In terms of methodologies adopted, the pursuit of these objectives involved, first, the collection and analysis of legislation and regulation from February to June 2020 concerning the response to the COVID-19 pandemic in the judicial system. The analyse considered three phases of the response to the COVID-19 crisis (pre-State of Emergency; during the State of Emergency; and after the end of the State of Emergency) and three legal professional categories (judges, public prosecutors and court clerks). Secondly, we collected and analyzed online news, opinion pieces and press releases from the unions, associations and public official institutions in the same period.

<sup>1</sup> A. Blackham, Reconceiving Judicial Office through a Labour Law lens. *Federal Law Review* 47(2) pp. 203–230.

<sup>2</sup> P. Casaleiro, T. Maneca Lima, A. P. Relvas, M. Henriques, J. P. Dias, Working conditions and Quality of work: reflections for a study of judicial professions. *International Journal on Working Conditions*, 18 pp. 83–97.

<sup>3</sup> A. C. Ferreira, J. P. Dias, M. Duarte, P. Fernando, A. Campos, *Quem são os nossos magistrados? Caracterização profissional dos juízes e magistrados do Ministério Público em Portugal*, Coimbra, CES/UC. 2014. <<https://estudogeral.sib.uc.pt/bitstream/10316/86801/1/Relat%20Quem%20s%C3%A3o%20os%20nossos%20magistrados%202014.pdf>> [accessed 21 April 2020]; K. Mack, S. Roach Anleu, The National Survey of Australian Judges: An overview of findings. *Journal of Judicial Administration* 18(1) pp. 5–21. C. Thomas, *2016 UK Judicial Attitude Survey. Report of findings covering salaried judges in England & Wales courts and UK Tribunals*, London, UCL Judicial Institute, 2017; C. Thomas, *2014 UK Judicial Attitude Survey. Report of findings covering salaried judges in England & Wales courts and UK Tribunals*, London, UCL Judicial Institute, 2015. D. M. Flores, M. K. Miller, J. Chamberlain, J. T. Richardson, B. H. Bornstein, Judges' Perspectives on Stress and Safety in the Courtroom: An Exploratory Study. *Court Review: The Journal of the American Judges Association* 45 (3) pp. 76–89.

<sup>4</sup> The use of the word "magistrate" in Portugal refers to judges and public prosecutors as they are considered, by law, magistrates, with parallel statutes with similar duties and rights, although performing different functions. Both professions are considered to be "judicial professions".

<sup>5</sup> T. Hagen, S. Bogaerts, Work Pressure and Sickness Absenteeism Among Judges. *Psychiatry Psychology and Law* 21 pp. 92–111.

<sup>6</sup> C. Na, T. Choo, J. A. Klingfuss, The causes and consequences of job-related stress among prosecutors. *American Journal of Criminal Justice* 43 pp. 329–35; R. Ludewig, J. Lallave, "Professional Stress, Discrimination and Coping Strategies: Similarities and Differences between Female and Male Judges in Switzerland", in: U. Schultz, G. Shaw (eds.), *Gender and Judging*, Oxford, Hart Publishing, 2013, pp. 233–252. Lustig, K. Delucchi, L. Tennakoon, B. Kaul, D. L. Marks, D. Slavin, Burnout and Stress Among United States Immigration Judges. *Bender's Immigration Bulletin* 13 pp. 22–30.

This article results from the research being developed under the QUALIS project, which aims to examine the working conditions of judicial professions 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 in the working conditions of the various court professionals, and will continue indefinitely, so this issue is of particular interest to fulfil the main goals of QUALIS.

## 2. The organization and management of the judicial system in Portugal

In order to understand the judicial system responses to the COVID-19 pandemic in Portugal, a brief description of Portuguese courts management system and of the level of modernization of justice is essential. The model of governance of the judicial system and management of the courts is crucial to understand the response to a crisis as the COVID-19 that required the adaptation of the justice system at different levels – physically, technologically, procedurally and organizationally. Additionally, a robust technical infrastructure and end-to-end digital judicial proceedings (“paper-less”) are key elements to safeguard the continuity of the functioning of justice during disastrous events of COVID-19 pandemic.

In relation to judicial modernization, in the past two decades, Portugal promoted several initiatives, such as the *Justica + Proxima* Programme,<sup>7</sup> investing in the dematerialisation of case management and information, with platforms such as CITIUS<sup>8</sup> and SITAF.<sup>9</sup> However, studies have characterized the model of governance of the Portuguese judicial system and management of the courts as a rigid structure, with dispersed authority poorly coordinated.<sup>10</sup> Firstly, the Portuguese legal system contains two major jurisdictions: 1) ordinary; and 2) administrative and fiscal. The judicial courts<sup>11</sup> deal with ordinary criminal and civil matters, whereas administrative and fiscal matters are heard in the separate administrative court system.<sup>12</sup> According to Dias and Gomes,<sup>13</sup> the duplication of structures, such as the two Supreme Courts (Justice and Administration) and two High Councils (for the Administrative and Tax Courts and for the Judiciary in general); and the separate management of human resources, in particular judges, leads to dysfunctionality.<sup>14</sup>

Secondly, the management of buildings, equipment, information technology and human and financial resources is divided between the Directorate-General for the Administration of Justice (DGAJ)<sup>15</sup> and the Institute of Financial Management and Judicial Infrastructures (IGFEJ)<sup>16</sup> from the Ministry of Justice, the Prosecutor General’s Office,<sup>17</sup> the various High

<sup>7</sup> P. Fernando, Intertwining Judicial Reforms and the Use of ICT in Courts: A Brief Description of the Portuguese Experience. *European Quarterly of Political Attitudes and Mentalities* 8(2), pp. 7–20.

<sup>8</sup> CITIUS is an electronic platform, which seeks to provide a single online solution for judges, public prosecutors, lawyers, solicitors, enforcement agents and insolvency practitioners. CITIUS involves the modernization of core IT systems in the courts, including judicial electronic proceedings from first instances to the Supreme Courts and more than 100 technological features in all Magistrates Information Systems.

<sup>9</sup> SITAF is the electronic platform of the administrative and fiscal jurisdiction which introduced an innovative feature of digital transmission of tax proceedings from administration to administrative and fiscal courts.

<sup>10</sup> J. P. Dias, C. Gomes, Judicial Reforms ‘Under Pressure’: The New Map/Organisation of the Portuguese Judicial System. *Utrecht Law Review* 14(1), pp. 174–186. G. Palumbo, G. Giupponi, L. Nunziata, J. Mora-Sanguinetti, Judicial Performance and its Determinants: A Cross-Country Perspective. *OECD Economic Policy Papers*, 5, OECD Publishing, Paris.

<sup>11</sup> The judicial hierarchy comprises courts of first and second instance and the Supreme Court of Justice.

<sup>12</sup> The administrative and fiscal jurisdiction comprises courts of first and second instance and the Supreme Administrative Court.

<sup>13</sup> See Dias and Gomes, *supra* note 10.

<sup>14</sup> See Dias and Gomes, *supra* note 10.

<sup>15</sup> DGAJ. 2020. *About DGAJ*. <<https://dgaj.justica.gov.pt/English/About-DGAJ>> [accessed 13 October 2020].

<sup>16</sup> IGFEJ. 2020. *Quem Somos*. <<https://igfej.justica.gov.pt/Sobre-o-IGFEJ/Quem-somos>> [accessed 13 October 2020].

<sup>17</sup> PGR. 2020. *Prosecutor General's Office*. <<https://en.ministeriopublico.pt/node/4083>> [accessed 13 October 2020].

Councils (of the Judiciary,<sup>18</sup> Administrative and Tax Courts,<sup>19</sup> Public Prosecution<sup>20</sup> and Court Clerks), and different intermediate management boards, such as the county courts management board. The different High Councils have responsibility in managing careers and disciplinary measures of each professional category – judges, public prosecutors and judges from the Administrative and Tax Courts -, except the Council of Court Clerks that has only disciplinary powers. Furthermore, the Supreme Court of Justice, the Supreme Administrative Court, the Appeal Courts (known as *Tribunais da Relação*) and the second instance administrative courts have administrative and financial autonomy. Thus, the management of courts is dispersed over different entities sometimes with competing and overlapping competences.

Thirdly, since the reform of the judicial organization in 2013 implemented during the Troika,<sup>21</sup> the management of each judicial court of first instance is carried out by a management board (*Conselho de Gestão*). The board has a tripartite structure composed by a presiding judge, a coordinating public prosecutor and a judicial administrator. The reform sought to implement an autonomous and concentrated management system for each of the 23 large courts, following a management-by-objectives model aimed at administering a more efficient and better form of justice. Within the area of management, the aim was to streamline distribution and procedural requirements, simplify the allocation and mobility of human resources and provide greater autonomy for the court management structures. However, many services with a direct influence on the functioning of the autonomous courts are still directly dependent on structures within the Ministry of Justice (particularly court management structures), while the judicial actors have little capacity to manage the local human and material resources that solve day-to-day problems effectively and swiftly.<sup>22</sup> For instance, the competencies to distribute the budget, as well as its execution, after approval by the Management Council, belong to the judicial administrator. However, most of the expenses depend on the technical advice and previous approval of DGAJ, decreasing the autonomy and responsiveness of the Management Councils and often preventing a timely response.<sup>23</sup>

### 3. The judicial system responses to the COVID-19 pandemic

The judicial system responses to prevent and control the infection by COVID-19 in courts can be divided into four major dimensions: (a) organizational – such as teleworking or the limitation of face-to-face service and contact with the public; (b) physical – such as (re)organization of workspaces or availability of personal protective equipment – PPE; (c) technological – such as virtual audience rooms and remote access to the judicial proceedings; and (d) procedural – such as the suspension of legal deadlines during the State of Emergency.<sup>24</sup>

<sup>18</sup> CSM. 2020. *O Conselho Superior da Magistratura é um órgão constitucional, colegial e autónomo*. <<https://www.csm.org.pt/csm/>> [accessed 13 October 2020].

<sup>19</sup> CSTAF. 2020. *Apresentação*. <<http://www.cstaf.pt/>> [accessed 13 October 2020].

<sup>20</sup> CSMP. 2020. *Conselho Superior do Ministério Público*. <<https://www.ministeriopublico.pt/pagina/conselho-superior-do-ministerio-publico>> [accessed 13 October 2020].

<sup>21</sup> Portugal signed the Memorandum of Understanding (MoU) with the Troika (European Central Bank, International Monetary Fund and European Commission) on May 2011, in order to receive a 78 billion euros' loan to support the State financial indebtedness. The intervention programme of Troika lasted 3 years and included the adoption and implementation of multiple measures with the aim to reduce the level of indebtedness of the Portuguese State. The MoU included measures to be implemented in the judicial system, such as the reduction of the number of courts (concentration) and the adoption of management structures to try to reduce the functioning costs of courts.

<sup>22</sup> See Dias and Gomes, supra note 10.

<sup>23</sup> A. N. Gonçalves, Administrador judiciário: um ano na nova estrutura judiciária. *Revista Julgar*, 27 pp. 177–191.

<sup>24</sup> For a more detailed and global analysis of the measures taken by 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. <[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)> [accessed 20 October 2020].

Along the first semester of 2020, the responses to the COVID-19 crisis can be divided in three different phases – pre-State of Emergency, during the State of Emergency, and after the end of the State of Emergency.

In the first phase, after the WHO declaration of public health emergency of international concern and following the guidelines of the Portuguese National Health Institution,<sup>25</sup> a set of measures were taken related to the procedures for prevention, control and surveillance of infection by COVID-19 in the courts. Within this context, Contingency Plans for the Courts<sup>26</sup> were prepared and guidelines for the face-to-face public attendance service were adopted by DGAJ, IGFEJ and management board of each district court.<sup>27</sup> The Contingency Plans for the Courts foresee the identification of the effects that the infection of workers by SARS-CoV-2 can cause in the court/district, the preparation of measures to deal with a possible case of infection, the establishment of specific procedures in a suspicious case, including the creation of an isolation room, with a set of equipment, and the acquisition and distribution of protective equipment and disinfection material.<sup>28</sup>

Following the declaration of the State of Emergency, on March 18<sup>th</sup>, a set of measures related to deadlines and procedural steps were taken with immediate repercussions on the functioning of the courts, reduced to emergency issues and the adoption of the judicial holiday regime (minimal services), resulting in an operational decrease, especially in the first two months of the pandemic.<sup>29</sup> Law 1-A/2020 of 19 March, amended by Laws 4-A/2020 and 4-B/2020 6<sup>th</sup> April, established that only urgent acts and proceedings in which fundamental rights are at stake were carried out in person (e.g. proceedings concerning minors at risk or urgent guardianship proceedings or criminal proceedings with persons in detention). Additionally, the use of digital 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. The judicial proceedings must be held whenever feasible through appropriate means of distance communication, namely by teleconference or video call, and should only be carried out in person when this does not imply the presence of a higher number of persons than those foreseen by the health authorities recommendations. During this period, the Decree no. 2-A/2020, art. 6, made mandatory to adopt the teleworking regime, whenever the nature of the work allowed it or the professional is at a higher risk of getting severe COVID-19 disease consequences due to prior health problems, according to the definition of the National Health Institution.

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<sup>25</sup> DGS, *Orientação n. 6/2020*, 26 March 2020. <<https://www.dgs.pt/directrizes-da-dgs/orientacoes-e-circulares-informativas/orientacao-n-0062020-de-26022020-pdf.aspx>> [accessed 20 October 2020].

<sup>26</sup> DGAJ, *Plano de Contingência Tribunais/Comarcas*, DGAJ, Lisboa, 2020. <[https://dgaj.justica.gov.pt/Portals/26/Not%C3%ADcias/Plano%20de%20conting%C3%AANCIA%20\(COVID%20-%2019\).pdf?ver=2020-03-05-123515-743](https://dgaj.justica.gov.pt/Portals/26/Not%C3%ADcias/Plano%20de%20conting%C3%AANCIA%20(COVID%20-%2019).pdf?ver=2020-03-05-123515-743)> [accessed 20 October 2020].

<sup>27</sup> DGAJ, *Ofício-circular n.º 5/2020*, 17 March 2020. <<https://dgaj.justica.gov.pt/Portals/26/10-OF%C3%8DCIOS-CIRCULARES/2020/Of%C3%ADcio-Circular%20atendimento%20presencial.pdf?ver=2020-03-17-100436-443>> [accessed 20 October 2020]. PGR, *Diretiva 2/2020*, 30 March 2020. <[http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/diretiva\\_pgr\\_2\\_2020\\_0.pdf](http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/diretiva_pgr_2_2020_0.pdf)> [accessed 20 October 2020].

<sup>28</sup> See DGAJ, *supra* note 26.

<sup>29</sup> According to a press release of the Ministry of Justice, “in the period from March 1 to April 23, 2020, 33,908 diligences were carried out by the courts, about a third of those carried out in the same period in the previous year. From March 16 to April 27, 2020, more than one million and 500 thousand acts were performed by law clerks, about a third carried out in the same period. (Press release: Return of the normal court activity. Minister visits Lisbon-North court), 2 June 2020. <<https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=1457a650-e0cf-47e9-9d3d-924d4c4fce5>> [accessed 20 October 2020].



After the end of the coronavirus State of Emergency, a transitional and exceptional procedural regime for judicial proceedings was established, reopening the courts, ending the exceptional regime for the suspension of deadlines, and returning to on-site discussion and trial hearings, even in non-urgent proceedings (Law 16/2000 – End of the judicial holidays regime). Additionally, the Ministry of Justice, along with the health authorities and the representatives of professionals in the justice sector, issued a set of guidelines aimed at reducing the risk of COVID-19 transmission in courts and ensuring the safety and health of judicial professionals.<sup>30</sup> The measures included the use of acrylic separators in the secretariats and the courtrooms, the reduction in the occupancy capacity of waiting rooms and courtrooms to 1/3, the need to ensure adequate ventilation of spaces by opening windows and doors, the mandatory use of a protective mask and/or a face shield, the need to ensure a distance of at least two meters between persons, and the need to implement a cleaning and disinfecting plan, among others. By 2 June, the Ministry of Justice had already spent €600,000 on individual protective equipment, to buy 340,000 masks, 11,071 protective shields and 96,540 pairs of gloves, as well as 276 thermometers for the isolation rooms and 785 acrylic separators for the attendance areas.<sup>31</sup>

The judicial system had great difficulty in adapting to the demands imposed by the pandemic COVID-19 in the different phases when compared to other public services (such as public schools, social security or tax services). First, following the declaration of the State of Emergency, while most of the public services continued to be provided through digital media and contact centres, the suspension of deadlines and procedural steps (except in urgent proceedings) led to the delay of countless judicial proceedings.<sup>32</sup> Second, the courts were one of the last public services to resume conditioned activity, on the third phase of deconfinement, one month after the end of the State of Emergency. At the beginning of May, the Minister of Justice stated that courts could still reopen during May.<sup>33</sup> However, this process was delayed. The delay was justified by the Presidency of the Republic on the basis of the need to match its entry into force with another law. According to the media, the delay may also be connected with the difficulty in gathering the logistical conditions necessary for the reopening of courts.<sup>34</sup>

#### **4. COVID-19 infection prevention and control measures in Courts: challenges and impacts in the working conditions**

The application of COVID-19 infection prevention and control measures in courts faced major organizational and resources (physical, human, etc.) challenges and had a great impact in terms of the working conditions of its professionals and in the very functioning of courts. On one side, the fragmentation and organizational rigidity mentioned above contributed to a disarticulated response, creating (or aggravating) asymmetric and uneven working conditions

<sup>30</sup> DGAJ et al., *Medidas para Reduzir o Risco de Transmissão do Vírus nos Tribunais*, DGAJ, Lisboa, 2020. <<https://dgaj.justica.gov.pt/Portals/26/COVID-19/Medidas%20para%20Reduzir%20o%20Risco%20de%20Transmiss%C3%A3o%20do%20V%C3%ADrus%20nos%20Tribunais%20COVID19.pdf?ver=2020-05-06-222236-000>> [accessed 20 October 2020].

<sup>31</sup> See Ministry of Justice, *supra* note 29.

<sup>32</sup> Ministério da Justiça, Nota à comunicação social: normalização da atividade dos tribunais, 6 May 2020. <<https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=67f0dc63-ca49-4e40-9d6a-e4a724e55e78>> [accessed 20 October 2020].

<sup>33</sup> Público, Ministra da Justiça quer que tribunais regressem ao serviço ainda este mês, 6 May 2020. <<https://www.publico.pt/2020/05/06/sociedade/noticia/ministra-justica-quer-tribunais-regressem-servico-mes-1915377>> [accessed 20 October 2020].

<sup>34</sup> Público, Engano atira reabertura dos tribunais para início de Junho, 29 May 2020. <<https://www.publico.pt/2020/05/29/sociedade/noticia/engano-atira-reabertura-tribunais-inicio-junho-1918561>> [accessed 20 October 2020].

in different courts and between different professional categories, during and after the State of Emergency. On the other side, the limitations of the technological infrastructure (hardware and software) and facilities of the courts (e.g. small spaces, lack of ventilation) made it difficult to respond (in a timely way) to the new pandemic prevention and control requirements. We will now look more closely at some of the challenges and impacts of the COVID-19 infection prevention and control measures in the working conditions of Portuguese courts.

#### **4.1. Difficulties and asymmetries in the implementation of teleworking**

The adoption of teleworking regime in courts, whenever the functions allowed, established by the Article 6, of Decree No. 2-A/2020, of 20 March, benefited from the implemented digitalization (dematerialization) of case management and information, that made the relevant documents easily accessible to different users (judges, public prosecutors, lawyers, solicitors, enforcement agents and insolvency practitioners), through electronic platforms (e.g. CITIUS). However, judges, public prosecutors and court clerks have not only different statutes and competences, but also respond to different career management and discipline entities, which had reflections in the different and uneven application of the teleworking regime in the courts (see point 2. above).

The High Council of Judges suspended the procedural acts and investigations, in which fundamental rights were not involved, allowing judges to work remotely and perform hearings through videoconferencing.<sup>35</sup> Similarly, the Prosecutor General's Office established that "Public Prosecution magistrates must refrain from appearing at the respective workplace, privileging teleworking and restricting their presence on the workplace to urgent and essential situations".<sup>36</sup> Accordingly, the vast majority of judges and public prosecutors quickly switched to teleworking. In a survey carried out by the Association of Portuguese Judges, in the last two weeks of March, 86% of the 390 of the surveyed judges said they only went to court occasionally and 97% said they were working at home.<sup>37</sup> The fact that most of the cases have already been digitized and most of the judiciary have a laptop with VPN, which allows remote access to the computer systems of justice (CITIUS in the judicial courts and SITAF in the administrative and tax courts), allowed for ease switch to teleworking.

The implementation of teleworking of court clerks, in court secretariats and the Public Prosecution services under the responsibility of the Directorate-General of Justice Administration and the Court Management Bodies, was slower and less comprehensive.<sup>38</sup> According to Order No. 3614-D/2020, of March 23, which defined the guidelines for public services in compliance with Decree No. 2-A/2020, of March 20, "the adoption of teleworking regime is mandatory for court clerks, whenever the situation of the worker and the functions in question permit and the Judicial Administrator determine." Court clerks requests for teleworking and remote access via VPN were centralized by the DGAJ at first and then forwarded to IGFEJ, which coordinated the assignment/configuration of VPNs by computer technicians who provide local support to each court. According to Circular Letter No. 6/2020 of the DGAJ, of 26 March, from a total of 7,252 court clerks, only 1,635 (22.5% of the court

<sup>35</sup> CSM, Divulgação n.º 81/2020, 20 March 2020. <<https://www.csm.org.pt/wp-content/uploads/2020/03/Div-81-2020-Estado-de-Emerg%C3%Aancia.pdf>> [accessed 20 October 2020].

<sup>36</sup> PGR, Diretiva n.º 2/2020, 30 March 2020. <[http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/diretiva\\_pgr\\_2\\_2020\\_0.pdf](http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/diretiva_pgr_2_2020_0.pdf)> [accessed 20 October 2020].

<sup>37</sup> Público, Juizes trabalham de casa, mas admitem dificuldades, 3 April 2020. <<https://www.publico.pt/2020/04/03/sociedade/noticia/juizes-trabalham-casa-admitem-dificuldades-1910958>> [accessed 20 October 2020].

<sup>38</sup> JN, Funcionários judiciais reclamam tratamento dado aos magistrados, 13 March 2020. <<https://www.jn.pt/jus-tica/funcionarios-judiciais-reclamam-tratamento-dado-aos-magistrados-11925679.html>> [accessed 20 October 2020].

clerks) requested teleworking (745 with their own computer or laptop already assigned and 890 with the computer made available by DGAJ).<sup>39</sup>

The difficulties in implementing teleworking are noticeable in the statistical data related to the procedures performed by court clerks during the State of Emergency. From March 16, 2020 to July 5, 2020, most of the procedures performed by court clerks were in person, only 34.8% of the procedures were performed remotely at CITIUS.<sup>40</sup> The difficulties experienced in the implementation of teleworking in the court secretariats and the Public Prosecution services inevitably led to inequalities in the working conditions of the professionals in the courts. While the majority of court secretariats and the Public Prosecution services remained working “in person” (even if on a minimum-service basis), the majority of judges and public prosecutors worked remotely, using the VPN system and videoconferencing systems, restricting their travels to the courts to specific and essential situations.

Although there are no studies focusing on the consequences of these asymmetries, previous studies have shown that court clerks tend to have higher levels of stress and lower levels of job satisfaction than magistrates.<sup>41</sup> Magistrates experience high workload and occupational stress and suffer from the severe risk of personal and work-related burnout. However, they also have higher job control and reward.<sup>42</sup> In the case of court clerks, the lack of control and autonomy regarding the pace and methods of work, plus relatively low wages, can contribute to greater dissatisfaction and stress in the COVID-19 context.

The various management bodies with competencies to provide the necessary working conditions limited a more efficient articulation and implementation of the taken measures, introducing different situations according to the competencies of the judicial professions and the instruments made available to each of the professions.

#### **4.2. Limitations of court facilities**

The judicial system revealed particularly great difficulty in adapting courts' facilities to new pandemic prevention and control requirements. In the first and second phase of response to the COVID-19 crisis, the responses of the judicial system were mainly based on procedural, organizational and technological measures, without significant changes in the physical spaces of the courts.

The Contingency Plan for Courts, prepared by the DGAJ, in addition to establishment of measures to deal with a possible case of infection by COVID-19, as well as the specific procedures in suspected or confirmed cases of infection, defined the terms for the acquisition and availability of equipment and products indicated by the National Health Institute. More specifically, the Contingency Plan established different entities responsible for the acquisition of equipment and products.<sup>43</sup> The Management Board purchased disposable gloves, thermometer and single-use cleaning equipment. The acquisition through a centralized contract in force of waste containers, with non-manual opening and plastic bags, and of alcohol-based

<sup>39</sup> DGAJ, Ofício circular n. 6/2020, 26 March 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)> [accessed 20 October 2020].

<sup>40</sup> DGAJ, *Evolução semanal da percentagem de atos praticados no CITIUS pelos oficiais de justiça em regime de teletrabalho e presencialmente nas secretarias*, DGAJ, Lisboa, 2020. <<https://dgaj.justica.gov.pt/Portals/26/Not%C3%ADcias/PDS%2013%20-%20Monitoriza%C3%A7%C3%A3o%20do%20teletrabalho%20-%2029%20de%20junho%20a%205%20de%20julho.pdf?ver=2020-07-10-172310-423>> [accessed 20 October 2020].

<sup>41</sup> P. R. Gil-Monte, J. López-Vílchez, J. Llorca-Rubio, J. Sánchez Piernas, Prevalencia de riesgos psicosociales en personal de la administración de justicia de la Comunidad Valenciana (España). *Liberabit*, 22(1) pp. 7–19.

<sup>42</sup> See Hagen and Bogaerts, supra note 5. See Ferreira et al, supra note 3.

<sup>43</sup> See DGAJ, supra note 26.



antiseptic solution (SABA) was centralized by DGAJ. These products should be made available in the service areas (for use by employees), in the isolation rooms and in the eating areas, as well as the respective supports, disinfectant for surfaces or surgical masks (depending on availability of suppliers).

The multiplicity of entities responsible for the acquisition of material, alongside the difficulties felt worldwide by the scarcity of these goods, led to delays in the judicial system response and inequalities throughout the country. The Union of Court Officials, in a statement of 13 March 2020, announced that, one week after the DGAJ presented the respective contingency plans, “there are many courts in Portugal that still do not dispose of disinfectant gel, gloves and masks, putting all those who work there and the users at serious risk”.<sup>44</sup> Later, in 1 April 2020, in an open letter to the Minister of Justice, the Union of Public Prosecutors stated that: “There are no protective masks or gloves in the courts and services of the Public Prosecution. There is no regular disinfection of the facilities (...). The disinfectant gels never reached the courts or those that arrived are already empty.”<sup>45</sup> In sum, during the State of Emergency, courts continued to work, although on a minimum service basis, without the working conditions that could ensure the health and safety of all judicial professionals.

After the end of the State of Emergency, the Ministry of Justice, along with the health authorities and the representatives of professionals in the justice sector, issued a set of guidelines aimed at reducing the risk of COVID-19 transmission in courts and ensuring the safety and health of judicial professionals.<sup>46</sup> According to the Ministry of Justice, by 2 June 2020, 91.8% of the courtrooms of judicial courts were considered suitable to conduct on-site trials, complying with the rules that ensure a minimum distance of two meters between people.<sup>47</sup> However, the conditions for carrying out on-site trials have been highly criticized by legal professionals. The Bar Association stated that, at the time, several cases of infection by COVID-19 in courts were being reported, which confirmed that they were areas of high risk transmission of the virus. In addition, the President of the Bar Association also stated that several court rooms are not sufficiently large to ensure adequate distancing between people, that the furniture in courts is not being frequently disinfected and that there is a lack of protective equipment, pointing out that the justice system cannot function if the security conditions of courts are not guaranteed.<sup>48</sup> Similarly, the Union of Court Officials stated that there are courts with small rooms that do not allow the social distancing required by the health authorities. Furthermore, the Union showed some concerns about the collective protection equipment, namely the lack of cleaning of air conditioning filters and the acrylic barriers.<sup>49</sup> Finally, the Association of Portuguese Judges has stated that judges must refuse to carry out trials in courtrooms that do not guarantee sufficient sanitary conditions to face the pandemic.<sup>50</sup>

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<sup>44</sup> See JN, *supra* note 38.

<sup>45</sup> SMMP. Carta Aberta (Open Letter), 1 April 2020. <<https://www.smmp.pt/wp-content/uploads/2020/04/carta-mj.pdf>> [accessed 20 October 2020].

<sup>46</sup> See DGAJ et al., *supra* note 30.

<sup>47</sup> See Ministério da Justiça, *supra* note 29.

<sup>48</sup> Ordem dos Advogados (Bar Association). Statement of the General Council on the Security Conditions of Courts, 8 June 2020. <<https://portal.oa.pt/comunicacao/imprensa/2020/05/12/a-reabertura-dos-tribunais/>> [accessed 20 October 2020].

<sup>49</sup> TSF, “Employees fear “tsunami of proceedings” and lack of security in the reopening of courts”, 3 June 2020. <<https://www.tsf.pt/portugal/sociedade/seguranca-preocupa-funcionarios-de-tribunais-governo-asseguracumprimento-de-regras-12270157.html>> [accessed 20 October 2020].

<sup>50</sup> Expresso, “Covid-19. Judges must refuse to carry out trials in rooms that do not guarantee the sanitary conditions, says union”, 3 June 2020. <<https://expresso.pt/coronavirus/2020-06-03-Covid-19.-Juizes-devem-recusar-se-a-fazer-julgamentos-em-salas-que-nao-garantam-condicoes-sanitarias-diz-sindicato>> [accessed 20 October 2020].

In a study about the Portuguese judicial architecture, magistrates identified three infrastructure problems that hamper the practice of justice: the lack of spaces (such as offices, audience rooms or waiting rooms), the deficient conservation of court buildings, and the inadequacy of buildings to new judicial and citizenship requirements.<sup>51</sup> Furthermore, the same study has shown that Portuguese courthouses have multiple and/or varied architectural profiles, with courts from different (political and temporal) periods and installed in purposely-built buildings or in adapted buildings or spaces. In the context of COVID-19, this diversity combined with the previous infrastructure problems, may explain why different courts were more affected than others. Thus, further investigation is needed.

#### **4.3. Limitations of the technological infrastructure**

The implementation of procedural and organizational measures depended heavily on the pre-existing technological infrastructure in Portuguese courts (such as the existence of complete digitalized judicial proceedings) but also the provision of videoconferencing (VC) solutions in the courts, such as the Cisco Webex Meetings tool.

Firstly, the electronic processing of cases and the practice of non-urgent acts at distance were only possible because most cases are available in the CITIUS and SITAF systems, and the magistrates have portable computers with VPN, which allow remote access to the computer systems of justice. However, in the survey carried out by the Association of Portuguese Judges, in the last two weeks of March, 70% of magistrates stated that it took longer to complete tasks remotely than under normal circumstances.<sup>52</sup> They point out two main reasons for the delay: (1) the fact some files (notably criminal and insolvency files) are not fully digitalized and (2) the difficulties in the remote connection. Nevertheless, a significant part considered a positive evolution of the experience over the two weeks.

In the case of court clerks, the operationalization of teleworking faced greater difficulties, due to the lack of technical means, which was reflected in the aforementioned reduced number of court clerks in teleworking. In the circular letter no. 6/2020, of March 26, of the DGAJ, 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 justice officials at the Court can be transported and used at their home, whenever necessary for teleworking, since the number of portable computers made available by DGAJ and District Courts/Administrative Courts are insufficient.”<sup>53</sup>

Secondly, following Law 4-A/2020, which reviewed the exceptional measures to combat the pandemic, providing for the carrying out of diligences in non-urgent cases, through means of remote communication, the IGFEJ made a Video Conference (VC) solution available to the Courts, supported on the Webex platform, from the Cisco manufacturer – the so-called “virtual courtrooms”. However, IGFEJ recognized, in a technical note of 27 April 2020, a set of disturbances in the virtual sessions and issued recommendations to try to solve the problems.<sup>54</sup>

<sup>51</sup> P. Branco, *Courthouses as Spaces of Recognition, Functionality and Access to Law and Justice: A Portuguese Reflection*. *Oñati Socio-Legal Series* 6(3) pp. 426–441.

<sup>52</sup> See Público, *supra* note 37.

<sup>53</sup> See DGAJ, *supra* note 39.

<sup>54</sup> IGFEJ, *Sessões de videoconferência. Nota técnica*, IGFEJ, Lisboa, 2020. <<https://www.csm.org.pt/wp-content/uploads/2020/04/20200428-Videoconferencia-nota-tecnica.pdf>> [accessed 20 October 2020].

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 on April 9, 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 insufficient.<sup>55</sup> Later, the presiding judges of the county courts presented a joint complaint to the body responsible for providing this computer platform (IGFEJ), regarding technical problems that made several trials unfeasible, arguing that the virtual courtrooms do not work, or operate with major disabilities.<sup>56</sup> Also the President of the Bar Association, Luís Menezes Leitão, in the press release of 12 May 2020, highlighted the ineffectiveness of the existing platform to carry out virtual judgements, pointing out that it failed systematically 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>57</sup>

## 5. Conclusions

This article aimed to provide a critical reflection on the judicial system responses to COVID-19 crisis, identifying the main challenges and impacts in what concerns the working conditions and functioning of Portuguese courts, during the first semester of 2020. The analysis pointed to three main conclusions.

First, the COVID-19 pandemic uncovered the organizational, physical and technological limitations of courts in Portugal, which led to the function of the courts (especially court secretariats and the Public Prosecution services) without the adequate working conditions that could ensure the health and safety of judicial professions. The operational “inflexibility” and the disarticulated response of the management bodies in courts, high councils and Ministry for Justice (and internal institutional departments) hindered the capacity to respond to COVID-19, limiting and delaying the implementation of teleworking regime in court secretariats and the Public Prosecution services and the provision of individual and collective protective equipment for COVID-19 in the courts. The lack of computers for the court clerks and the difficulties in the implementation of the VPN system and the videoconference systems and virtual courtrooms also hampered the implementation of teleworking in the case of the court clerks and conditioned the realization of procedural acts (e.g. trials and hearings) through videoconference, constraining the functioning of the courts.

Secondly, and consequently, these organizational, physical and technological limitations contributed to the creation (or aggravation) of asymmetric and uneven working conditions in different courts and between different judicial professions in Portugal, namely between magistrates and court clerks, in the context of the COVID-19 pandemic. While judges and public prosecutors had the necessary conditions to work remotely, 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.

Thirdly, the COVID-19 also unveiled the importance of the modernization process of the Portuguese judicial system, namely the dematerialization and digitalization of processes that allowed the quick reorganization of services and adoption of the telework in the case of

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<sup>55</sup> Público, Tribunais querem retomar actividade, mas queixam-se de não lhes facultarem meios suficientes, 9 April 2020. <<https://www.publico.pt/2020/04/09/sociedade/noticia/tribunais-querem-retomar-actividade-queixam-se-nao-facultarem-meios-suficientes-1911729>> [accessed 20 October 2020].

<sup>56</sup> Público, Salas de audiência virtuais não funcionam, reclamam juizes, 23 April 2020. <<https://www.publico.pt/2020/04/23/sociedade/noticia/salas-audiencia-virtuais-nao-funcionam-reclamam-juizes-1913625>> [accessed 20 October 2020].

<sup>57</sup> See Ordem dos Advogados, *supra* note 48.

judges and public prosecutors. Although there were problems in the functioning of virtual courtrooms or videoconference hearings, many of the necessary proceedings in a judicial process were possible to be done. And even after the end of the State of Emergency, judges and public prosecutors, following the general recommendations of the health authorities, remained working from home.

The COVID-19 crisis presents three main challenges for the future of the Portuguese judicial system. First, the need for an institutional reorganization – there are too many entities with overlapping competencies in management and organization of services, human resources and equipment/facilities. Second, the need of implementation of a Judicial Intervention Plan (JIP) that structurally address the space organization and physical and technological requirements of courts to ensure adequate healthy, safe and efficient working conditions of judicial professions (including the use of courts by lawyers and citizens). Finally, the need of implementation of a plan to deal with the inevitability of future similar crisis and mitigate the expected impacts, by defining plans with measures that would allow to prevent and/or quickly recover court delays, in order to respond efficiently to the claims of citizens and companies.

Judicial entities and authorities must take into consideration the possible impacts deriving from the suspension and postponing of proceedings and the suppressed demand of courts in the context of the COVID-19 crisis. In a context of lesser health risks, in the medium or long term, courts may register a significant increase in the volume of proceedings. However, the Ministry of Justice has not implemented, so far, any measure to mitigate the expected impacts or reduce the already registered impacts.

The current analysis presents two key limitations. The first limitation regards the period in analysis, the first semester of 2020, which does not allow a comprehensive review of the judicial responses to COVID-19 crisis and its impacts in the working conditions of the judicial professionals. The consequences of COVID-19 extend far beyond the first six months of the year. Therefore, future studies must include a broader period. A second limitation, refers to the focus on working conditions that overlooks another very relevant issue: the impact of COVID-19 in access of citizens to law and justice. Considering the operational decrease of courts, especially in the first two months of the pandemic, with suspension and postponing of proceedings and the suppressed demand, any future research and evaluation of impacts must consider the impact on the citizens' rights.

This article is, nevertheless, to the best of our knowledge, the first endeavour to address the judicial responses to the coronavirus crisis concerning the working conditions in the Portuguese judicial system. The coronavirus outbreak revealed the critical importance of health and safety of work measures and working conditions, drawing attention to the need to acknowledge courts as working spaces and consider the judicial professionals working conditions and risks. The COVID-19 continued. And this means that further impacts will be felt by society at large and courts in particular. To overcome its consequences will not be easy. But planning can be done.

### **Acknowledgements**

This work was funded by FEDER – the European Regional Development Fund through COMPETE 2020 – the Operational Programme for Competitiveness and Internationalisation (POCI), and by funding from the Portuguese Foundation for Science and Technology within the framework of project 29039 (Reference: POCI-01-0145-FEDER-029039).

### **Competing Interests**

The authors have no competing interests to declare.

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**How to cite this article:** João Paulo Dias, Paula Casaleiro, Teresa Maneca Lima and Conceição Gomes, 'Judicial Responses to COVID-19 Attack: Impacts on the Working Conditions of Portuguese Courts' (2021) 12(2) *International Journal for Court Administration* 7. DOI: <https://doi.org/10.36745/ijca.382>

**Published:** 06 May 2021

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