

## **Modernization as an enhancer of access to Justice and of proximity between key actors\***

### **Modernização como potenciadora do acesso à Justiça e da proximidade entre atores-chave**

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#### **Abstract**

As claimed by Richard Susskind (2017, 2019), Justice is changing, not only as a necessity, but as consequence of society demands. This paper analyses the way public policies have changed in the last 10 years and how modernization can be perceived both as an enhancer and as a cause of that change, specifically regarding the judicial system. The paper focuses on the interviews conducted with key actors at the level of public policies' definition, which aimed to understand Portuguese Public Administration in general, and the judicial system particularly. The major results of these interviews led to the conclusion that the judicial system is now at the center

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of a major development, enabled by the need to adapt to societal transformations and actors' demands. Also, in what Portugal is concerned, because of the European Union (EU) integration and the adaptation to its goals. As claimed by Richard Susskind (2017, 2019), Justice is changing, not only as a necessity, but as consequence of society demands. This paper analyses the way public policies have changed in the last 10 years and how modernization can be perceived both as an enhancer and as a cause of that change, specifically regarding the judicial system. The paper focuses on the interviews conducted with key actors at the level of public policies' definition, which aimed to understand Portuguese Public Administration in general, and the judicial system particularly. The major results of these interviews led to the conclusion that the judicial system is now at the center of a major development, enabled by the need to adapt to societal transformations and actors' demands. Also, in what Portugal is concerned, because of the European Union (EU) integration and the adaptation to its goals.

**Keywords:** Judicial System; Justice; Modernization; Innovation; European Union integration.

## Resumo

Como afirmado por Richard Susskind (2017, 2019), a Justiça está a mudar, não apenas como uma necessidade, mas como uma consequência das exigências da sociedade. O artigo analisa a forma como as políticas públicas mudaram nos últimos 10 anos e como a modernização pode ser entendida tanto como potenciadora e como causa dessa mudança, especificamente no que ao sistema judicial diz respeito. O artigo tem como foco as entrevistas realizadas a atores-chave ao nível da definição das políticas públicas, que tinham como objetivo entender a Administração Pública em geral, e especificamente o sistema judicial. Os resultados das entrevistas levaram a concluir que o sistema judicial está, neste momento, no centro de um grande desenvolvimento, permitido pela necessidade de se adaptar às transformações sociais e às exigências dos atores. Ao mesmo tempo, no que a Portugal diz respeito, considerando a sua integração na União Europeia e adaptação aos seus objetivos.

**Palavras-chaves:** Sistema Judicial; Justiça; Modernização; Inovação; Integração na União Europeia.

## Introduction

In the final minutes of the interview conducted with the Portuguese Justice Secretary of State a request was made: that the scientific research also focus on understanding how the judicial system would manage to adapt and become an effective answer so everyone could access to it. This access should be measured in terms of equity, transparency, and proximity.

The paper emphasizes the changes that are taking place in the judicial system, because of societal transformations, citizens' demands and information, and communication technologies' developments, but also analyses the dimensions Anabela Pedroso mentioned: equity, transparency, and proximity of Justice to citizens. These last variables can be described as Edmund Burke once stated: "A fact occurred that is difficult to talk about and impossible to remain silent" (cit. in Sen, 2012 [2009], p. 37).

All these elements and dimensions are simultaneously cause and consequence of the judicial system modernization and innovation in the past few years.

As a result of the interviews' analysis, one concluded that the judicial system modernization has performed a major role in allowing citizens access to Justice, by understanding its meanders, and moving inside them with less difficulties. But it also contributed for key actors to come closer and start speaking a more similar language.

In Portugal, these developments and changes were enabled by the EU integration (in 1986), even though most interviewees mentioned that the judicial system demand for innovation and modernization is prior to that.

The paper discusses the judicial system as a public policy and how it managed to adapt to all the societal challenges and demands. Exploratory interviews were conducted with current and previous key actors placed in high level positions of public policies' definition.

The paper starts by explaining the methodology implemented in this first stage of the scientific research project. It analyses the interviews considering their relevance for understanding Justice and its modernization. The third part of the paper focuses on key actors and the proximity between them. And, finally, access to Justice is the dimension that, consequently, will bring together all the previously mentioned elements and allows to understand how the judicial system (or Justice) functions as a public policy and how it was forced to innovate.

## **Methodological procedure**

The research project started by conduct exploratory interviews.

First, a characterization of the Constitutional Governments' organization was elaborated. Thus, the ones included in this research were those from 1986 to the current days, that is, since the 10<sup>th</sup> Constitutional Government. The reason for that was related to a major goal of the project, which was the understanding of the Portuguese judicial system since the EU integration (and its influence on that system).

Considering the adequacy of the actors, the availability of the interviewees, the possibility that they could resort to their memory and provide relevant information to what was intended. Plus, the government areas adjusted to the investigation object, were the variables included in the sample selection. The last four Governments were selected, in a time horizon of the last 10 years.

**Table 1. Conducted interviews**

<b>Contact/Key informant</b>	<b>Period governing</b>	<b>Government role</b>
Joaquim da Costa	June/2011- October/2015	Secretary of State for Administrative Modernization
João Farinha	Current	Advisor of the Secretary of State for Digital Transition
Alexandra Leitão	Current	Minister of State Modernization and Public Administration
José Macieira	Current	Advisor of the Secretary of State for Justice
Maria de Fátima Fonseca	Current	Secretary of State for Innovation and Administrative Modernization
Rui Batista	Current	Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office
Anabela Pedroso	Current	Secretary of State for Justice
Francisca Van Dunem	Current	Minister of Justice

All the interviews were transcribed and analyzed considering the guidelines of Bardin, Reto, & Pinheiro (1977).

## **Justice perceived as a Judicial System**

Judicial System is the first concept which must be clarified. Its reference is made in a restrict sense, considering the tools, actors, professions/careers, reforms and all the actions available to individuals in their current daily lives. In this specific context, Judicial System will be used in the same sense as Justice, and not considering the ethical or philosophical reflections, except for the last section of the paper.

The reason for that is the system being perceived as a machine, which was the focus of many developments in the past few years, with the attempt of contributing to its modernization and innovation (related to the pressure the European integration brings). Also because Judicial System is perceived as a public policy (Melro, 2021), and it should be analyzed considering the models of the modernization analysis, as an example the Martinellis' proposal (Martinelli, 2005).

Justice is understood as the response to a problem or to a request the citizen has and needs to be solved. The judicial system includes human, material, functional and structural components, being this the multiple careers and professions, the functions everyone occupies,

the resources needed to do so (such as platforms, legislation, rules, and documents) and as well as the structure, meaning the way it is organized.

The paper adopts the definition of system from Backlund (2000), “Simply put, a system has to consist of at least two elements. Since a system is not an aggregate, there must be connections between them. [...] The second condition ensures that there cannot be any independent subgroups.” (Backlund, 2000, p. 448). This definition can be enriched by Sillitto et al. (2017), which claims that a system is “an integrated set of elements, subsystems and assemblies that accomplish a defined objective. These elements include products (hardware, software, firmware), processes, people, information, techniques, facilities, services, and other support elements.” (INCOSE cit in. Sillitto et al., 2017, p. 4).

In conclusion, the Judicial System is a set of combined elements (human (careers) and material resources, functions, and structures), which are interdependent and interconnected. Considering the relevance that the Judicial System operates in several societal areas (economic, entrepreneurship, registration, and citizens identification etc.), its definition is of great importance for the understanding of how the public policies at the definition level are elaborated.

Therefore, the components of the judicial system considered are as follows (with no specific order):

**Table 2. Components of the Portuguese judicial system**

<b>Careers/Professions</b>	<b>Materials</b>	<b>Functions</b>	<b>Structural</b>
Judiciary Police	Reports	Registration	Police stations
Prosecutor	Informatic platforms	Investigation	Courts
Judge	Statistics	Provide information	Informatic platforms
Lawyers	Processes	Inquiry	Registration offices
Judicial officer	Legislation and Rules	Support the citizen	Citizen stores
Insolvency administrator	Protocols	Access to Justice	Ministry
Implementing Agent			
Notary			
Solicitors			
Associations (Notary, Lawyer, Solicitors...)			
Registrar			
Ombudsperson			
Attorney General			
Minister of Justice			

Secretary of State (and Adjunct) of Justice			
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Considering the careers, it is not easy to define all the professions which contribute or operate in the judicial system midst. Take the example of the Judiciary Police (JP), a specific police force which has a major role in investigating and/or preventing crime, with an indirect connection with the judicial system. However, its relevance makes it important to be included.

All the other professions are intertwined with one another, when a reform or a minor change is conducted in one, another will inevitably feel that change, whether because a new procedure is implemented, or new rules are defined. José Macieira explained this concern:

One of the critical points is that this is a web of huge dependencies. When we deal with the JP, we are dealing with forensic medicine too, we are dealing with the relationship with the Public Prosecutor's Office. When we unfurl the part of the registrations, then the citizens and companies all become worried, because there are a number of things that you can't do, simply buy or sell a house or buy a car, [...] the citizen card, because it is the card that starts the entire process of identifying all the cards that exist in the country [...]. (José Macieira, Advisor of the Secretary of State for Justice, since 2015).

This is how the Justiça + Próxima Plan was born. This plan [...] received contributions from all stakeholders in Justice, from the citizens consulted for this purpose, in addition to incorporating the commitments made in the Government Program, National Reform Plan and Simplex+. (Francisca Van Dunem, Minister of Justice, since 2015).

Material resources give support to the professions, with the definition of functions and the structural elements. It is not an exhaustive list, but all the components are also intertwined, with each one of them having connections with the subcomponents listed.

The previous table and list of components was relevant to contribute for the Judicial system modernization analysis, which occurs in some of the components, but inevitably it has an impact in all of them. And one could also include the existence of another dimensions, which is the institutions and its consequently different levels of acting, for example, the European Court of Human Rights or the International Court of Justice.

Justice is a puzzling system, where all the elements that are included in it influences the others, where functions must be defined to maintain order, and contribute to a sense of security, where citizens know they can find the answer for the problem faced. But also, material resources are an important piece because they define the processes and show the impact. Finally, the structural component includes the places needed to perform all the activities, which have specificities in Justice, and the organization demanded.

## Judicial System Modernization

Modernization is a process. It is clear the dynamic characteristic it implies. To what the Judicial System is concerned, in Portugal, it is a process which started more prominently in the last two decades, with the judicial map reorganization (Dias & Gomes, 2018).

There can be several perspectives in analyzing the modernization process: the historical one, when the goal is to understand society cycles; the societal one, modernization processes' perception oriented specific of a certain society or community; and the procedural one, when the focus is the perception of different ways of doing. The adopted perspectives are the societal and the procedural.

According to Martinelli (2005),

By modernization we mean the sum of the processes of large-scale change through which a certain society tends to acquire the economic, political, social and cultural characteristics considered typical of modernity. [...] More generally, it was used as a means of describing and legitimizing new institutions, new legal rules, or new scholarly assumptions (Martinelli, 2005, p. 5).

The modernization happens in a bi-directional way, it enables the judicial system reforms, but it is also a cause of that change. Being by processes, new legislation, new buildings, contract of new collaborators, extinction of workstations, creation of new ones, among many other changes and reforms. All of those enabled by the modernization process. However, when those happen, many other occur consequently.

Since 1976, if official governmental documents are scrutinized (or even in a period before that (Corte-Real, 2018)) it is already possible to find the need to modernize Portuguese public administration. One cannot claim that the Portuguese judicial system modernization process only started in the decades above mentioned (since 1986).

First, the legal reform is mentioned, with the reference to Civil Code or Penal Code. Secondly, the judiciary reform was a concern, with the courts, the Republic Prosecutor General and the Judiciary Superior Council reforms being mentioned. But also reforms in the Judiciary Police, in the Registration and Notary services and in prison services. Including informatic services and platforms<sup>4</sup>.

As Maria de Fátima Fonseca states,

[...] talking about modernization and innovation is something that is not exclusive to the post-25 of April [the date that marks the beginning of the democratic regime, in Portugal] [...]. In fact, in several diplomas, there were already several indications that the Public Administration should always modernize." Maria de Fátima Fonseca, Secretary of State for Innovation and Administrative Modernization (since 2019).

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<sup>4</sup> I.<sup>st</sup> Constitutional Government Program, available at <https://www.historico.portugal.gov.pt/pt/o-governo/arquivo-historico/governos-constitucionais/gc01/programa-do-governo/programa-do-i-governo-constitucional.aspx>

If modernization and innovation processes can be perceived as existent from many years till now, this was not an easy path. Filipe Teles (2020) already showed the slowness of new practices in the public sector. Considering that the last 45 years of democracy (after 41 years of dictatorship) were, gradually, seeing processes of simplification, modernization, proximity to the citizen, efficiency, and transparency (Teles, 2020, pp. 446-447). However, as Ongaro had already mentioned, these processes are being introduced more at the micro level of public management, which does not fail to have an impact at the macro level (Teles, 2020, pp. 448-449).

All these factors and dimensions lead to innovation, which is one of the dimensions of modernization. Innovation or innovative processes implemented in the organization of any system, method, or procedure, whether at the level of any sector (public, private, social, academic) or production area (industry, services...) always implying an adaptation. This adaptation can be constant and frequent, just like Dan Andrei (2019, p. 386) points out, "The innovation has a character of permanent change, which aims to adapt variables, determinants in order to achieve the success of competitive strategies."

Therefore, innovation is the process through which new elements are integrated along the decision and implementation chain of the judicial system, this perceived as a public policy. And it is a process, because it is considered that it is not something to be carried out only at the beginning of its implementation, but rather it will be possible to integrate according to the needs in terms of demands' change and adaptation.

Innovation is often applied as being the opposite of tradition. Traditional ways of doing things, linked to history, uses and customs. The option is to keep the judicial system connected to what has been its founding characteristics, almost from a conservative perspective of judicial solutions' implementation. However, Tradition and Innovation are two faces of a unique coin, hardly distinguishable in judicial system.

Tradition and innovation are not contradictory terms. [...] we are inevitably doomed to innovate, and this must be part of our tradition. Because if we don't focus so much on tools, but instead focus on the purpose of things, on value, if the constitutive value of public administration is to provide public service, reassuring responses in the form of public policies as well. If that, is our purpose and if that is our core value, we are doomed to innovate and therefore we can maintain organizational traditions, we can even maintain traditional political philosophies, but always reconciled with a perspective of innovation in the answers given. (Maria de Fátima Fonseca)

The development of technology and digitization is a challenge for many traditional sectors, such as the case of Justice. Ensuring the use of direct channels and the use of technologies means saving precious time in the response of the justice institutions. But the use of technology (with the corresponding change in processes and procedures) cannot (and should not) make the judicial system "robotic". It is necessary to promote the humanization of the system and it is in the contact between these two vertices that the reconciliation of tradition and modernity must be found. (Francisca Van Dunem)

### **(a) Information and Communication Technologies and infocommunicational competences**

During the interviews, Information and Communication Technologies (ICT) were tools immediately associated to the modernization processes in Portuguese Public Administration and in the judicial system. First, to modernize implies to digitalize, to computerize, to dematerialize. Consequently, when asked about the characteristics of Public Administration and the judicial system modernization, the interviewees immediately associated it to the use of ICT:

The information and communication systems allowed us a more holistic view of public services and allowed us more collaborative work contexts, adjusted to the needs of citizens and companies, also ensuring greater “physical” proximity to the Public Administration. (Alexandra Leitão, Minister of State Modernization and Public Administration, since 2019)

Over the past two decades, several reforms have sought to make the judiciary more transparent, accessible, and effective. With its most recent reforms, “Justiça + Proxima” and “Simplex +”, Portugal has adopted an integrated approach of administrative simplification, service improvement and digital strategies. (Francisca Van Dunem)

[...] artificial intelligence or sensors, in fact, there are a set of investments that are planned now for the next year to take advantage of this. For example, we can use artificial intelligence in communication channels with the citizen, the so-called chat bots, so that we assure a greater capacity to respond to people’s doubts, information needs at any time. (João Farinha, Advisor of the Secretary of State for Digital Transition, since 2019)

Application of ICT to the ways of doing things and to processes is not the only form of modernization and innovation. And this is how things have changed over the past years:

But I would say that [...] we also know that modernizing is not about injecting technology into organizations and therefore we do not transform anything by just acquiring platforms and linking platform authorization services. We know that electronic bureaucracy is much more dangerous than paper bureaucracy. And, if we don’t keep up with the introduction of new technologies and, nowadays, we always talk about digital, [...] and tools with changes in people’s attitudes, in knowledge, but, above all, in the attitudes and management capacity of organizations, regardless of structural issues, in my point of view, they end up being just an externality. In fact, we are not able to make changes that are sustainable. (Maria de Fátima Fonseca.)

And this is a reflection that is present in the development of major changes, being them the introduction of new ways of doing, new processes, new organization models and maps or the development of informatic applications or platforms:

As a moment prior to this entire process [the modernization process of the last five years], I would like to highlight the introduction of experimentation and systemic

thinking methodologies - service design and system thinking - in a concept of agile project development - agile projects - which helped to shape a new work paradigm: collaborative, simple, focused on results and measurable. (Francisca Van Dunem)

The Magistrado [a platform that is being developed to incorporate tasks and access to judicial processes] was already developed in a completely different way. The issue of User Experience, think-by-design. When we are thinking about modulating all applications, we already did it by designing interfaces that are more intuitive and more natural in the relationship with our users. Then we won the first part of the battle which is "I'm not afraid of technology, and I adapt to it quite quickly." (Anabela Pedroso, Secretary of State for Justice, since 2019)

But ICT are merely tools if not accompanied by competencies to use them (which is exactly what Anabela Pedroso draw attention for). As Marques (2009) claimed, "it is necessary a change of attitude, culture and organization" (Marques, 2009, p. 15) if the will is to really apply and use the potentialities ICT provide. This is something the interviewees also mentioned with quite relevance:

[...] having infocommunication skills is increasingly relevant for the adoption of modernization practices and measures. These are fundamentally centered on innovation in welcoming and attending policies for citizens and companies, administrative communication, procedures' simplification, involvement of interested parties and the production and processing of information for management. These diverse components contribute to the continuous management improvement process, which must be responsive to contemporary needs and trends, while being able to anticipate and subsequently plan responses to future challenges. (Alexandra Leitão)

When using technology, we must ensure that the basics are understood, that we are not just digitizing physical processes. A real understanding of the digital and its potential will effectively allow for correcting what is not working in the system and will allow us to advance with innovations that can increase understanding, efficiency, usability, and convenience in the use of Justice services. Without any doubt infocommunication skills help to understand the true reach of the digital and to establish better policies. (Francisca Van Dunem)

[...] the experience of knowing what technology architectures are and how technology architectures are implemented is the added value I can have. There is no transformation today if the protagonists do not have the slightest knowledge of what this means. [...] How am I going to transform systems as complex as CITIUS or SITAF [informatic platforms which allow interested parties to access their judicial processes] without understanding that there is architecture by objects or whatsoever. (Anabela Pedroso)

Not only were the infocommunicational competencies – meaning the capacity/ability to search and gather information and/or establish social relationships in digital media (Borges & Oliveira, 2011) – mentioned as relevant, but also the ability to communicate with other disciplines in such a way that leverages individual knowledge, but also transparency, efficiency and the possibility to transform the judicial system in order to make it more accessible.

In the words of Rui Batista:

On the part of magistrates, the positions of head of the magistracy are held by magistrates, jurists. And, therefore, digitization was not part of our personal training and, perhaps, the people who are in charge are from generations that have been digitized, they were not already born with this digitization. But what I have noticed in contact with various entities is an awareness that it is absolutely strategic and crucial. What I admit is that we will clearly have to open our eyes and have an idea, not only of humility, but of interdisciplinarity, with technical elements, largely outside justice, that allow us to realize the potential that, at this moment, digital solutions can bring to our business.” Rui Batista, Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office (since 2019).

In conclusion, one can state that ICT are cause and consequence of modernization processes, they can facilitate those processes (with all the necessary cautions) and can make them faster. But none of it is relevant for the judicial system matter if not associated with a culture and an awareness of the potentialities ICT bring. And that is what Giddens discuss:

In all cultures, social practices are routinely altered considering the progressive discoveries that feed them, but only in the era of modernity is the revision of conventions radicalized to apply (in principle) to all aspects of human life, including the technological intervention in the material world. It is often said that modernity is marked by an appetite for the new, but this is perhaps not entirely accurate. What is characteristic of modernity is not an adoption of the new, just because it is new, but the presumption of generalized reflexivity – which evidently includes reflection on the nature of reflection itself.<sup>5</sup> (Giddens, 1998, p. 27).

That reflection is often made when it comes to define new processes and procedures.

## **(b) Processes' and procedures' definition**

Change does not come easily when a procedure is performed in a certain way for years. In fact, that was one of the challenges mentioned by the interviewees, when asked about the barriers to modernization:

There are two things [challenges], first, people's demotivation. Public servants, in general, have been sacrificed for decades and, I think, that makes people very defensive to any change. They think, “There we go again, a few more people who think they are the greatest to change all this”. This resistance also has to do with [...] age. This is a problem, it's the biggest problem that the Public Administration has, it's not just in Justice, it's general. (João Farinha)

The first major challenge was linked to Justice organizational culture. We encountered challenges and situations that needed to be resolved pragmatically. It was necessary to

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<sup>5</sup> Translation provided by the authors.

do something different, which would allow to create results more quickly, and which would instigate people to step out of their comfort zone. At the same time, [...] it was necessary to create a sense of belonging on the part of justice officials that would allow for a renewal of the “culture of service” and restore the trust of operators and citizens in Justice.

From an operational point of view, financing, and the state of the legacy of justice regarding information systems were other challenges (and that still have to be overcome). (Francisca Van Dunem)

This clearer when it comes to integrating technologies in judicial system. Susskind (2017), in his study regarding the future of lawyers’ profession, already mentioned the challenges actors from the judicial system would have to face if the goal is to modernize (even though the paper does not consider that modernization only has to do with technology integration):

[...] when thinking about technology and the internet, the challenge is not just to automate current working practices that are not efficient. The challenge is to innovate, to practice law in ways that we could not have done in the past.

At the same time, though, many of these innovative technologies are disruptive. This means they do not support and sit happily alongside traditional ways of working. Instead they fundamentally challenge and change conventional habits. And so it will be in law. These pervasive, exponentially growing, innovative technologies will come to disrupt and radically transform the way lawyers and courts operate. (Susskind, 2017, pp. 14-15)

As for the Portuguese judicial system, modernization and innovation were words that were present for quite some time in strategic plans. And that has inevitable consequences in the way things are thought and executed, whether in a definition level, or in an implementation one. But was there a strategic plan or were changes operated by feel? This question was asked to the interviewees, so that it was possible to understand how changes were introduced.

Anabela Pedroso gives a glimpse of some “recent” chronological milestones:

[...] in 2003 we had, in fact, a moment when we started talking about technology strategically identified with the plan. At the time, with the action plan for e-government, which had a very strong component for the judicial area. And then we returned to have what is still within your question, as the need occurred, we would give some answers. In 2006, Simplex was deployed, despite being a different strategy, because it was a bottom-up strategy. It was more the notion of serving the citizen, from the outside to the inside, starting from the need, find the answer inside. (Anabela Pedroso)

And José Macieira explains how the strategies for judicial system modernization have been implemented in the last legislature time frame (last four years, which started in 2019): “[...] a plan was elaborated, which lasted these four years. This plan was thought of in three months, and we thought based on all the reports that we had from all the organizations, which they do every year, reading, seeing, arguing, because three months is not much time.”

In other words, a three-month plan to modernize the judicial system was elaborated, which resulted in the project *Justiça + Próxima*<sup>6</sup> (Closer Justice). The goal was to transform the judicial system in such a way that would make it closer to the citizens, more transparent, more efficient, and more human. But this implies internal and external changes, the involvement of all key actors and the availability of all the resources. As explained by Anabela Pedroso: “[...] the most important part we have to do when talking about judicial system modernization, first understand what the situation is, what the problems are and, above all, try to find quick solutions, but always with the involvement of the protagonists, because otherwise the relationship of trust will get lost.”

In the level of public policies’ definition, according to the interviews’ analysis, processes’ and procedures’ definition does not come without some barriers: (1) the advanced age of some players in the judicial system (judges, lawyers, notaries, services directors, etc.) which may hamper the modernization; (2) the costumes and frequent uses that some processes have implicit (traditions); (3) the lack of knowledge regarding the use of technology and even the skepticism concerning its potentialities; (4) the difficulty to gather multi and interdisciplinary teams; (5) the inexistence of a specific department of informatics and computer science in Public Administration and, finally, (6) the lack of financial resources. And this is just to sum up the challenges when it comes to (re)define processes in the Portuguese judicial system, mentioned by the interviewees.

Changes have been made, and projects as *Simplex*, *Simplex+*, *Justiça + Próxima*, Citizen Card, Citizen Stores, *CITIUS*, *SITAF*, *Magistrado* are being developed and deployed, and many of them are being thought to bring Justice closer to the citizens and to make it truly accessible.

## Key actors

One of the most important variables when comes to evaluate the Public Policies’ modernization is the involvement of key actors. And the explanation of who those key actors are. This gains a special significance when the reference is made to the judicial system, considering the vulnerable area it is (by definition, the judicial system is an area that people seek to solve personal problems and conflicts (Susskind, 2019, pp. 23-24)), but also because it involves several actors, with several interests (some of them in conflict) and in different stages of the system.

When asked about key actors involved in the judicial system modernization process, the interviewees gave different answers in reference to what department/Ministry they were integrated. But all the interviewees agreed in one common answer: the citizens must be included in the process. And in some projects, from the beginning.

The key actors are, immediately, those to whom the Administration addresses its answers, to listen to citizens and companies. (Joaquim Costa, Secretary of State for Administrative Modernization, from June/2011 to October/2015).

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<sup>6</sup> More information at <https://justicamaisproxima.justica.gov.pt/>.

And [Justice] closer to the Citizen, by placing the relationship with the Citizen at the center of its activity, simplifying and clarifying the language and information provided. Providing new and varied services and guaranteeing a multichannel. (Francisca Ven Dunem)

This is one of the highlighted dimensions by Fonseca and Carapeto (2009). The authors state that, “Public administration modernization of the present days, more than dependent on modernization strategic and broad plans, it depends on the creation of human networks that develop a collaborative culture and concrete project-oriented which satisfy the citizens’ real needs.” (Fonseca & Carapeto, 2009, p. 266. Translation provided by the authors).

In fact, citizens are frequently mentioned by the interviewees, as being in the center of all the modernization process. In some cases, this process is not only made for them, but it starts with them, “The bet on digital as mediator, through the opening of several Citizen Spaces – managed by local authorities with the support of AMA [Agency for Administrative Modernization] – is one of the ways found to provide close responses to populations, for example, in accessing digital public services.” (Alexandra Leitão)

Actors and their importance in the modernization process, specifically of the judicial system, is also frequently mentioned by Dias and Gomes (2018). The authors explain the role of different actors in the judicial system reorganization, even considering the different stages where they are involved, depending as well on which actors the reference is made to. One of the examples the authors give is the creation of CITIUS, a technological platform where different interest parties access to their judicial process, being possible to begin a process and digitally submit various documents along the way. The parties can be judges, public prosecutors, court clerks, lawyers, and solicitors<sup>7</sup>.

However, at the public policies’ definition level, this interconnection, articulation, cooperation, and communication of different actors is perceived as one of the most relevant dimensions:

[...] we also have pressure, for example, from business confederations [when they alert us] “pay attention to licensing, to companies’ relationship, for example, at the level of reporting obligations to the tax authority, social security or SNI [Statistical National Institute]” and, therefore, we have many key actors, in the end, signaling to us what the Government’s priorities are or should be. (João Farinha)

[...]and we are in gradual articulation, and this is the strategic, to create interconnection structures, and that is why interconnection is also fundamental, with the digital systems of our main partners, the criminal police bodies, judicial police, PSP [Public Security Police], GNR [Republican National Guard]. [...] we now have another project, the AMA, [...] which is a way of guaranteeing that our computer system is coherent with other digital systems. There are many public services that are behind, but they are all investing in digitization right now. That way they can connect with us. [...] another virtue was to articulate the Supreme Judicial Council, the Public Prosecution, and the Ministry of Justice. Because in the justice system management,

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<sup>7</sup> (<https://www.citius.mj.pt/portal/article.aspx?ArticleId=0>)

there is no single responsible hierarchical entity, the Ministry of Justice respects the independence of the Supreme Judicial Council and the autonomy of the Attorney General's Office. Therefore, the Ministry of Justice cannot impose goals, it can only articulate goals. But internally, establishing goals to magistrates, namely quantitative ones, was a shock and was and still is a challenge." (Rui Batista)

So, if, on one hand, all different key actors individually play an important role in the definition of public policies, namely, in the judicial system. The system and its modernization processes are thought to facilitate peoples' lives, being the lives of the ones that are in the decisions' side, being the lives of the ones who must accept and obey them.

On the other hand, the coordination and articulation of different actors is one of the most challenging tasks. But, at the same time, it is the only way modernization process can be accomplished.

Maria de Fátima Fonseca explains this idea:

"Therefore, in recent years, this continuous path of orientation towards transformation, simplification, digital introduction, has been increasingly associated with the emphasis on *collaboration*, on *innovation* and on *participation*, of the *involvement of actors*. Therefore, in a logic of public policies, not as something autocratically decreed by the State, but as a process of involvement. In fact, *multipolar*, of various authors, with different rationales and, obviously, with different roles in this multi negotiation, which is made with the focus on the purpose of achieving a result, whether in terms of the renewal of the public services offer, or in terms of generating new responses for society, for the economy, for people in general. Without this combination, I would say that we would not truly be able to understand the latitude of the transformations we call modernization. (Maria de Fátima Fonseca)

But how does the integration of ICT, and the correspondent infocommunicational competences, the definition of new processes and procedures and, finally, the intervention of key actors, result in an effective access to Justice?

## Access to Justice

Daniel Bonilla Maldonado (2020) suggests three approaches to the concept of "access to Justice": *constitutional*, which tries to understand how Constitutions include the access to Justice, and explains how the limitations in that access also occurs; *sociological*, which is divided into different dimensions. The one that is relevant for the scope of the paper is the understanding of "how institutional designs facilitate or impede access to justice (...) This approach to the right to access to justice also examines the reasons for the distance that exists—to varying degrees in all liberal democracies—between written rules, which give the right a universal character, and the rules in action" (Maldonado, 2020, p. 17). The third approach is the *normative* one, which considers aspects of the law, its application and interpretation, as well as the costs to access to justice.

In the words of the interviewee Anabela Pedroso, it is relevant to understand the following:

How the justice system manages to adapt in a way that it can effectively be a response to access to justice?! It is not access to law, access to law is more linked to the normative component, legal aid. I am talking about access to justice as the ability that, anyone with a need, without understanding anything about justice, or its jargon, its language, can know for sure that he/she will be treated fairly, with transparency and with proximity. And I think that these are perhaps the fundamental aspects. (Anabela Pedroso)

That is one of the reasons why the paper proposal contains inside of the judicial system the justice concept itself and, inevitably, ethical, and political variables, as well as the need to explore the injustice concept. Therefore, the concerns shared by Amartya Sen (2012 [2009]) are followed, namely when the author questions: "What role will have rationality and reasonableness in the process that leads us to understand the demands of justice?" ([2009] 2012, p. 11. Translation provided by the authors). But in a sense that institutions that are transformed must consider the needs of present and future times and citizens, how to actually include them in the transformation process and the dimensions that must be taken into account. And that is: language, platforms, ease of access and usage (of those platforms), ease of access to a response, effective response to the conflict, transparent responses etc.

It is not possible to ignore the other elements included in the access to Justice definition (whether the constitutional ones, or normative ones), and, in that sense, we follow the idea of Dias and Gomes (2018):

Access to the courts is currently constrained by many factors such as legal costs, restrictions on legal aid, and access to other legal services, in particular the Public Prosecution Service. However, physical distance is also an important aspect of access, and reforms of the judicial map should not compound geographical abandonment. It is necessary to take into account the impoverishment of populations, geographical asymmetries and the travel difficulties and costs for parties and witnesses during the entire proceedings. It is possible to create a balance between rationalisation, access and citizenship without using methods that are too punitive for communities in the interior of the country. The present reform has made justice, in general, more distant. (Dias & Gomes, 2018, p. 186)

Practical aspects of access to Justice, the things that are often forgotten or taken for granted, but are what, most of the times, contribute to delay Justice, inefficient systems, inability for citizens to clearly understand what happens in a process (or how to begin a process) they are involved in, are the dimensions included. This practical and managerial perspective is situated upstream from the philosophical and downstream from the normative.

In that sense, Lucy (2020) states,

The current relatively easy availability of cases and statutes in electronic form means that, once citizens are made aware of these sources, they can acquaint themselves with the law. And that is exactly as things should be, if law is indeed a means of subjecting human conduct to the governance of rules. [...].

The relative ease with which much legal knowledge can be accessed may lead one to wonder why the second component of AtoJ [Access to Justice] is necessary. This is the

legal expertise component, and it insists that guidance be available about what the law requires. [...] Legal knowledge is complex. [...] Some complexity arises because current legal knowledge draws upon a long tradition and rich vocabulary of legal concepts that do not always overlap with ordinary common-sense concepts. Furthermore, even when legal concepts have obvious equivalents in ordinary language (think, for instance, of causation or intention), the apparent correspondence is often inexact. [...] Complexity marks legal knowledge for another reason. It arises from the process of integrating current legal developments into the narrative of existing and past law. [...] The third component of AtoJ is the legal fora component. It concerns access to those bodies, such as courts and related institutions, which constitute the primary dispute resolution fora of most legal systems. (Lucy, 2020, pp. 39-40).

An attempt of answering the question: Is Access to Justice effectively happening, in the Portuguese judicial system? is provided by the OCDE recommendations:

- a) Develop a longer-term inclusive and comprehensive justice strategy, which brings together different branches of power and goes beyond the electoral cycle to respond to the legal needs of people, businesses and other users across the country, including vulnerable groups.
- b) Strengthen a user-centred and integrated approach to the provision of legal assistance, legal aid, and dispute resolution services, including legal assistance, lawyers, referrals, ADR [alternative dispute resolution] and online dispute resolution (ODR) as part of a continuum of dispute resolution services.
- c) Continue improving design and functioning of justice information systems.
- d) Consider establishing inter-institutional working groups to review existing procedural laws, to ensure their full alignment, including with the growing importance of ADR mechanisms and people centric approaches. They could, in addition, evaluate non-legislative measures, such as resource allocation and technological improvements.
- e) Strengthen the involvement of court users in the design and assessment of the ongoing rollout of the Tribunal + project. These efforts should be accompanied by greater communication of reforms to enhance understanding and familiarity of the introduced changes. (OCDE, 2020, pp. 12-20).

This means that, a lot of work has already been made, the efforts to provide Justice to everyone are working, and most of the times, the desired ones. But, as already stated, Justice is a complex system, with multiple actors, different dependencies between them and it includes several tools. So, a lot of work needs to be done, but in a way that, as claimed by Arete (2021), access to Justice is a top priority (Arete, 2021).

## Conclusions

Portuguese Judicial system is, to some extent, under an ongoing reform. This is underlined by most interviewees and by the literature on the topic (Pedroso, Trincão, & Dias, 2003). That reform, mostly in the past few years, implicitly include processes' and procedures' modernization, with innovative approaches to old problems (whether incremental or disruptive ones).

One of our main conclusions is the pervasive and ubiquitous characteristics technologies have in this Portuguese judicial system modernization process. This may seem a basic statement, but not if one considers the implicit tradition there is in a system that has hundreds of years of existence, and hundreds of habits and uses of a certain way of doing things, with a very rigid normative framework.

To contradict that fact (but without losing the imperious juridical certainty and security), new concepts and work experiences are important to be included, which are: collaboration, interoperability, communication, connection, cooperation, and many words that allow the key actors to feel involved in that change, in order to positively contribute to it.

That said, the second conclusion is that it is not possible to operate the judicial system modernization if key actors are not included, if that modernization (or reform, or innovation) is imposed only from a top-down approach. This is not only because of what imposed measures create on actors (for example, resistance), but, and most important, because a judicial system implies actors in all the stages of its existence, it has no relevance whatsoever if it is not thought for those actors, and with those actors. They are the ones who will use it and make it work.

Therefore, modernization bottom-up strategies must include all the networks judicial system has, and the tools needed to apply those strategies. One of the most important at the time is to provide actors with relevant competencies not only for the changes that are occurring in the judicial system, but also for the XXI century, and for the higher and higher adaptation of processes to the technological revolution, that are infocommunicational competencies.

The last conclusion is related to the EU role in the modernization processes happening in Portuguese judicial system. Portugal is part of the EU since 1986. This means that there is a supranational entity ruling and evaluating national decisions and activities. Paradigmatic examples of this are the *2019-2023 Action Plan European e-Justice*<sup>8</sup>, *Shaping Europe's Digital Future*<sup>9</sup>, *2021 EU Justice Scoreboard*<sup>10</sup> and, one of the most recent and relevant, the *Recovery and Resilience Plan*<sup>11</sup>, which includes a huge amount of money and several measures for judicial system modernization.

None of what has been said and none of the modernization measures would be useful if they don't allow effective access to Justice and the proximity between key actors, but also proximity between the system and citizens. Those goals seem to be well understood by policy actors when they clearly identify which barriers they face, solutions to overcome them and a specific time horizon to do it.

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<sup>8</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0313\(02\)&rid=6](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0313(02)&rid=6)

<sup>9</sup> <https://ec.europa.eu/digital-single-market/en>

<sup>10</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3523](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3523)

<sup>11</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2985](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2985)

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