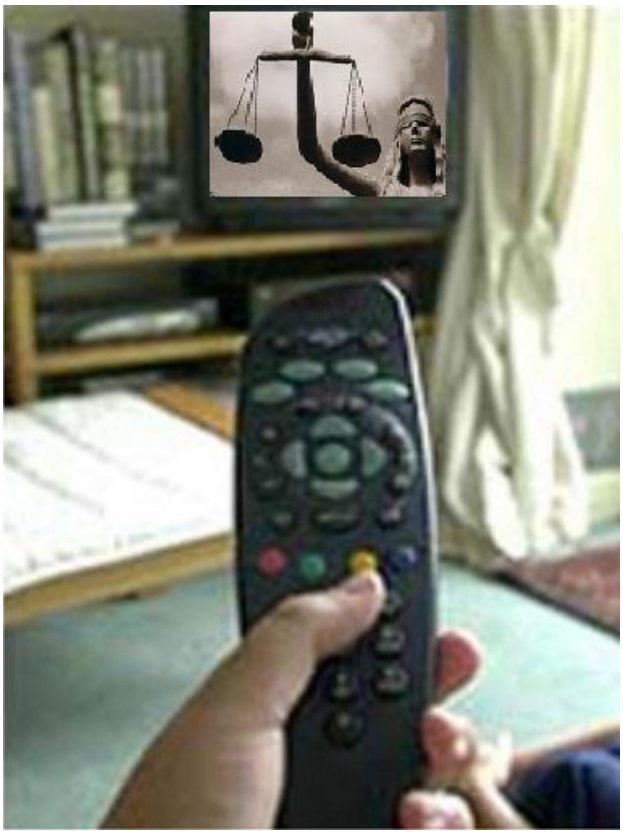
To Judge and to Inform: the magistrate as an active player of the communication of Justice



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“I can't believe that!” said Alice.

“Can't you?” the Queen said in a pitying tone. “Try again: draw a long breath, and shut your eyes.”

Alice laughed. “There's no use trying,” she said **“one can't believe impossible things.”**

“I dare say you haven't had much practice,” said the Queen. **“When I was your age, I always did it for half-an-hour a day. Why, sometimes I've believed as many as six impossible things before breakfast. (...).”**

Lewis Carroll
Through the Looking Glass
(Chapter V, Wool and Water)

INTRODUCTION

As future Public Prosecutors, presently ending the first cycle of studies at the Centro de Estudos Judiciários[1], in Lisbon, Portugal, the authors have been interested, early on, in the implications presented by present day intense mediatisation of Justice.

To communicate is, presently, a main concern for the Judiciary[2], more and more focused on passing a message to the public as a way of strengthening its democratic legitimacy. But it is also a concern for the Media that has elected everything related to the Judiciary as interesting enough to become an object of its activity, therefore, becoming truly the voice of a public opinion that remains (physically) far away from the Courts themselves. Much more than lateral to the administration of Justice, communicating Justice is almost as essential nowadays as delivering Justice, as rendering a sentence, etc… And here lays our main interest in the subject. Communicating justice presents ethic concerns to magistrates, both individually, and collectively. The magistrate himself, from an individual viewpoint, confronted with the intense mediatisation of a case presented to him to decide, is, above everything, a passive agent of that mediatisation process, due to an important set of

- *negative constraints* such as the duty of secrecy (to be presented later on) and the institutional constraints (as a non-existing policy of communication of Justice, and the own traditions, and hermetical language, of the Judiciary);
- *positive constraints* such as the publicity principle, that forces some communication to happen.

On the other hand, to the reporter, for example, on such a scenario, communicating Justice has to be dealt with the specific ethical problems presented, much different from the ones posed by political, or economical related subjects. After all, whatever the subject presented by the Media will be, the probability is that the majority of the public will believe that that subject is presented as an objective truth, and in the case of judicial matters, consequently, the *innocent until proven guilty* principle can become hollow words.

It is an almost chaotic scenario. However, we believe, it should not be a fatalist one. It is not destiny that forces the Judiciary and the Media to act as if institutional contacts could not be established or strategies to maximize the public interest, and therefore minimize the dangerous risks presented by inaccurate information, could not be engaged. It is, above all, inaction.

Though our main object of study is the Portuguese law, and the Portuguese approach to such matters, it will not be ignored the wider European context.

[1] Roughly translated as Centre for Judiciary Studies, where future Judges and Public Prosecutors are trained

[2] As sometimes is due to happen when one needs to pass a message, mainly when translation occurs, some concepts will necessarily be dealt with less concerns about precision. So, concepts as Judiciary or Magistrates will be addressed to Courts, or Judges and Public Prosecutors, respectively.

Our goal is to provide a comprehensible diagnosis of the wider situation, and to contribute – if possible – with new arguments to a continuous debate on how to shape the risky, yet necessary, relationship between the Courts and the Media.

I. RELATIONS BETWEEN COURTS AND MASS MEDIA: THE CONSTRAINTS

Since the development of mass media that Courts and all Judicial System are constrained by two powerful forces: on the one hand, there is a positive constraint which is the publicity principle, in other words, the duty of publishing all judgments, and, on the other hand, there is the duty of secrecy, a negative constraint, that forbids the judge to make any public comment about a case that is still being judged or might be submitted to judgment.

1. The positive constraint – the publicity principle

Courts in their herculean task to administer justice on behalf of the people, should never forget that the people is also the receiver of their decisions, and that it is in their name that the law is applied. This fact isn't recent in the history of European Civilization. Indeed, the knowledge of judgments by the public was the first form of participation, information and supervision of judicial activity, suppressed only at times, regimes or societies where obscurantism, the concentration of power or even totalitarian regimes reigned.

It is true that we now live in a world where the interest of mass media in the Judicial System is increasing. In fact, all "eyes" are upon the courts and in this atmosphere it is difficult to harmonize all interests. In this context it is important to notice that it is crucial that all people have the opportunity of knowing how the law is applied by Courts, this knowledge is achieved by enshrining of publicity principle, and goes beyond mere interaction between courts and the media.

Actually, this principle is established in all European Constitutional texts, and also, in the sixth article of the European Convention for Human Rights (ECHR), that states: *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

Thus, by saying that *"everyone is entitled to a (...) public hearing"* this article wants to avoid all secret judgments and enable that, not only the particular stakeholders but also the public in general, have an effective opportunity to directly or indirectly participate in the discussion and access the formal and final decision of the Court. Indeed, and in the words of Orlando Alfonso *"all the secrecy and all the mystery creates doubts on the" honesty "of justice and impartiality of the judge"*, and only if this participation is ensured can the trial be considered fair. Fulfilling this principle, will not only ensure the transparency of all judicial decisions, but will also reinforce the community's trust in independence and impartiality of the Judicial System. In fact, the principle of publicity is defined as a true principle of self-legitimacy of the exercise of judicial power. At this context we cannot forget the important role played by mass media despite all misunderstandings between them and Judicial System.

As we said before, the public hearing may be excluded *"in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."* However, only in exceptional situations this principle is allowed to be withdrawn and that decision should be based on principles of appropriateness, proportionality and necessity. Indeed, an unjustified violation of this principle will lead to a breakdown in legitimacy in the exercise of judicial function itself.

It is undeniable that one of the major beneficiaries of the principle of publicity is the mass media, and it is clear that they play an important role in controlling the judicial system. This was highlighted by The European Court for Human Rights, in the case Sunday Times v. The United Kingdom (1979/04/26), where the Court admitted that media can, by disregarding legal channels, invade the functions of the Courts, encouraging the public to form an opinion about a case submitted to judgment, before analyzing all evidences, and, thus, to induce judgments. In fact, the Court said that if this happens there is a risk of vanishing the trust and confidence in courts and their decisions. So, it is important, as we shall see ahead, to establish contact points between media and courts in order to avoid that.

It is also important to notice that some legal systems oblige the judges to list all reasons that form the basis of their decisions. In fact, in the opinion of G. Canotilho and V. Moreira, this obligation is itself a guarantee of a fair trial. Indeed, only by accessing to all reasons that underlie the decision will it be possible for parties, directly, or for society, indirectly, to control those decisions and thus legitimize the exercise of the judicial function, accepting or criticizing them.

This obligation cannot be considered only as a formal duty, but it should be seen as a way to achieve social peace, the legitimacy and self-control of all judgments. Indeed, if Courts manage to convey their decisions clearly and concisely, so that all recipients understand them, social peace will, thereby, be achieved because society itself will feel that decision as their own, and will also feel comfortable to

appoint their weaknesses, and thus contributing to a better law, allowing courts to exercise their power in a transparent manner, reaching, therefore, the social legitimacy of their power.

Moreover, it can also be a reflection, and even self-criticism, on the part of courts, requiring the judges the rationalization of the reasons that based their decisions, facilitating self-monitoring of their function and the consideration of all relevant elements to the decisions, and, consequently, improving their quality.

Lastly, it can also ensure the right of appeal, allowing both material and formal control, and reinforces the right of citizens to a fair trial.

Given all of the above, a question arises immediately: in an increasingly globalized society like ours how do we harmonize those principles with a growing interest by the legal world, in particular the courts? Nowadays, the principle of publicity seems to be in crisis, not only because its character is presented as merely symbolic at the public eyes, but also due to excessive media coverage of hearings and decisions, that intends to form a certain opinion without providing all available evidence. Furthermore, another question also occurs: how to reconcile the growing interest of the public in courts' daily work with the duty imposed to all judges to not comment, in public, any case that is still being judged or might be submitted to judgment?

2. The negative constraint – the duty of secrecy

In all democratic constitutional states, even though in the countries that are based on common law legal systems, it its important, and even one of its demands, that Magistrates are submitted to some professional duties. One of those duties is the duty of secrecy, which consists in a prohibition to comment issues submitted to Courts or that might be submitted. The Portuguese Statutes of the Public Prosecution Department (Law n. 60/98 of August, the 27th) establishes that "*Public Prosecution Service magistrates may not make declarations or comments regarding proceedings, except, when given superior authorization, when this is for the defense of honor or for the fulfillment of another legitimate interest."* (article 84)[3].

This prohibition is related to other duties such as impartiality and independence of Magistrates. These three duties are even more important when the lights of media turn to public and private life of Magistrates. In fact, any breach of these duties will put in question the trust and the confidence on the independence and impartiality of the Judiciary System.

Notice that judicial independence is not a privilege or a prerogative of the individual Magistrate, but a guarantee of all citizens, and it means that it is imposed on each Magistrate the responsibility to decide a dispute on the basis of the law and evidences, without external pressure or any kind of influence.

[3] Judges, in Portugal, are obliged to identical duty

Related to this concept is the concept of impartiality, although not being the same as impartiality *refers to a state of mind or attitude of the court in relation to the issues and the parties in a particular case"*[4].

To guarantee both independence and impartiality it is critical that the Magistrate ensures that his conduct, in and out of court, maintains and enhances the confidence of all stakeholders. In this context, a Magistrate should not make any comment in public that can affect the fair trial of any person or issue. However, this doesn't mean that a Magistrate should be hermetically sealed in his own house in complete isolation from the society. In fact, *"the nature of modern law requires that the judge lives, breathes, thinks and partakes of opinions in that world (...) increasingly, the judge is called to (...) decide controversial moral issues and to do so in increasingly pluralistic societies"*[5], something he could not do if he lived apart from the society.

The prohibition imposed on Judges or Public Prosecutors to comment certain issues means that they should not take part in a dispute that has been submitted to a Court, because if they did that, the concept of impartiality, and consequently, the concept of independence, would be in jeopardy.

However, *"this prohibition does not extend to public statements made in the course of the judge's official duties, to explanation of court procedures, or to a scholarly presentation made for the purpose of legal education. Nor does it prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in judicial review proceedings where the judge is a litigant in an official capacity, the judge should not comment beyond the record"*[6]. Notice that such public intervention must never be used to promote Magistrates' career or to damage another Magistrate, because what will be questioned is the integrity and the prestige of the entire Judicial System.

Thus, how do we harmonize this duty with the growing need of people to ask the Judge or Public Prosecutor what, how and why he decides in a certain way about a certain issue? On the one hand, the function and duty of the media is gathering and conveying information to the public and comment on the administration of Justice, both during and after the trial. However, on the other hand, Judges and Public Prosecutors should refrain from answering questions put by the media and should not make incidental comments about some media articles referred to cases submitted to judgment. In fact, *"a judge should speak only his or her reasons for judgment in dealing with cases being decided, it is generally inappropriate for a judge to defend reasons publicly"*[7].

We cannot simply remove the media from courts and judicial system, even though, sometimes one may be tempted to consider that the media misreports court proceedings. Therefore, it is urgent to establish a relationship between Courts and mass media, and consequently, give the public the opportunity to control the exercise of judicial power, while all duties imposed to Magistrates are, also,

[4] "Commentary of the Banglore principles of judicial conduct"
[5] Ibid.
[6] Ibid.
[7] Ibid.

ensured. However, how should this relationship be established? Should it be the Judge or the public Prosecutor, himself, to establish such relationship, providing the necessary clarifications or should press offices be created in the courts? Can there be another solution? And in that case which?

In the next chapter we will try to point out some ways and solutions to the problems mentioned above.

II. THE RESPECTIVE ROLE OF COURTS AND MEDIA

1. The cohabitation - General Aspects

As it was already stated, if publicity is a core value of the affirmation of the Judiciary, the Mass Media have, therefore, a central role in such a process.

In a simple approach, Courts and Mass Media share the same stakeholders – the citizens, or the public opinion, each and every individual living in society. Both institutions define, in different settings, whatever is the public interest associated to the administration of Justice. Courts need the Mass Media to participate in their own process of democratic legitimacy, and the Mass Media derive from the activities of Courts one of the sources of their own social utility.

However, the relationship between Courts and Mass Media is institutionally contradictory, and such conflict - apart from the deontological one, to be treated in another section - needs a broad characterization and a setting of solving, or conflict minimizing, strategies.

The main biographical data of such a conflict is well known. The fierce interest of the Mass Media in everything related to Court's activities, we assume, is strongly linked with the public opinion's growing awareness of the importance of such activities, and its own democratic maturity. One can therefore assume that as democratic institutions tend to become more solid, the public scrutiny of its institutions, and the will to participate in their respective activities, grows proportionately.

2. The Mass Media and the Courts

a) Mass Media

As a concept, it is well known and studied by the social sciences field. Mass Media designate an open catalogue of communicational channels that share the potential target of an anonymous, and uncharacteristic, public. Typically, there is no subjective identity between various types of Mass Media, but objective identity. Different communication realities are Mass Media: the written press, the cinema, the radio, TV.

Certain aspects of its activities, and historic role, must be analysed:

- it's role as a cultural agent: as an example, the Italian language was first used as a global language for the Italians, in detriment of local dialects, just after Second World War, as a result of

increasing radio transmissions. The Media contribute to greater homogenization and transmission of knowledge.

- the reproductive capacity of the mediatic event: a mediatic event, besides providing a frame onto a given event (or one, or several perspectives, over the same event), has a natural capacity of self-reproducing, thus becoming the mediatic event itself the object of mediatic projection. As an example, whoever saw Bagdad's recent occupation by American forces, could conclude that as important as the event of the occupation itself, the journalists sensations, dramatic descriptions of bombardments, and smoke columns were of mediatic interest and occupied significant time;

- the Media as a public forum: it is a consequence of the dynamics behind the relationship between the Media and the public opinion whose feedback is important to the Media itself. It stresses the Media's role as a true mediator between the anonymous citizen and the world, which grows in importance as less effective are institutions while trying to guarantee public' participation.

b) The Courts

The way Courts - especially Portuguese courts, the reality that we know better - communicate their decisions is part of the problem. Traditionally, Courts communicate in a professionally guided manner, the language used being strongly hermetical thus reducing its ability to reach the broader public. This has been the model for years, and it grows as magistrates gain more experience and develop a more broad and comprehensive legal culture widening the communicational gap. Most times, in a legal tradition as ours, where writing occupies a central role, reading a sentence is not an easy task to whoever is outside the same professional circle. Also here, some kind of adaptation by the Courts is necessary (the risk being the absence of communication of Justice) if Justice is to be communicated in its own (pure) terms.

On the other hand, the use of communication advisers is limited in Portugal. There is no solid institutional approach to the matter and no clear rules defined to the activity of communicating Court's activities.

As a result, mediatic events are managed in a reactive process, in which the event is responded by several actors in the field but not accompanied since its beginning. Also, such institutional absence triggers the use of anonymous sources of information, and speculation arises as a way of explaining the (sometimes, too many) unexplainable.

On an individual perspective, the magistrate's crisis grows as he is in the centre of the mediatic event while remaining therein as a passive agent about whom everything is said and written. Magistrates are put in a situation of *throwness*[8] (as of *being thrown)* - the magistrate is launched onto a mediatic event, without preparation, and with the negative constraints formed by his deontological duties, the absence of an institutional response and without being able to preview the consequences of his actions

[8] See Plácido Conde Fernandes for a more profound approach on the matter.

and inactions. On the other hand, the Magistrates suffer from communicational stress, i.e. an individual crisis lived by the magistrates who feel the mediatic event as completely external to them but knowing that in fact their role is in the centre of that event.

c) The Courts' role of promoting legal culture

At the same proportion as the mediatisation of justice increases, the importance of the judicial system increases as well. Therefore, Courts can and should play an essential role in building the definition of the legal culture of today, helping to promote undeniable values of our societies such as the defence of human dignity or the protection of fundamental rights.

Apart from the duty of judging, there is a demand for Courts to know how to educate citizens about Justice making them understand that this same Justice corresponds to the ideal of abstract justice that is common and equal to everyone. Citizens will only be able to understand that Courts can't apply divine justice when they learn how to respect the legal procedures in their two separate moments: respect for the investigations that are necessary to undertake and respect for the decision that is ruled.

It should be seen as natural to regard Courts as sources of information and communication. There is more to Courts than judging. Administering Justice implies communicating with society. We should not forget that it is the Courts' duty to address all matters that are submitted to them.

It is healthy that in a democratic system all matters are discussed openly, especially since justice is no taboo. If Courts are institutions of sovereignty to which the Constitution recognizes competence to administrate justice on behalf of the people, it would be inconceivable that it wouldn't be allowed for that same people to discuss justice. However, judges and prosecutors are not always ready for such a demand. There is an ongoing suspicion that surrounds the relation between journalists and legal agents, especially since judges started realizing that the recorders, pens, cameras and lenses were no longer pointing at the accused or the victims but rather at themselves.

Therefore, this is not an easy task. The biggest problem lies essentially in two aspects:

- the way information is delivered to the citizen;
- on determining who should provide that information.

Conciliating the media language and the court language will not happen easily. This is mainly due to a timing problem: on the one hand, there is the need for immediacy; on the other hand there is the need for thinking. In fact, the time of justice is longer as there are many phases to go through: investigation by the prosecution, recollecting evidence, cross examination, accusation and trial. Afterwards there will be a sentence convicting or acquitting the defendant. In the media world time is played by the minute.

Courts shouldn't trust entirely in the media to pass on to the citizen the qualities of their decisions as this could mean a bigger risk of misinterpretation and contribute to the degrading of the judicial institutions.

We shouldn't also forget that trying to adopt a simpler language so that the decisions can be fully understood by the citizens increases the risk of a lesser quality of the sentences given by the courts.

What should be the best way for the court to make sure that its role of promoting the country's legal culture is fully accomplished? Nowadays there are a variety of solutions. One of them would imply the creation of a press room that could provide all the necessary information permitted by law.

d) The mediatic representation of Courts

The Media have managed, to a certain extent, to compete with Courts when it comes, mainly, to criminal justice. The public debate around many criminal cases constitutes, frequently, a symbolic judgement, where the public opinion serves as the Judge, and witnesses, defendants, experts, and so on, participate almost without any chance to act otherwise. It erodes core principles of the rule of law, like the presumption of innocence, treated in mainstream Media with relative care (with the frequent use of the adverb "allegedly").

As some scholars (Helena Machado and Filipe Pinto) argue, the Media tend to create public dramas, the public being dragged to the event, somehow forced to be emotionally drawn into it. By comparison with its swiftness, the justice system seems too inefficient.

For, by nature, the Courts and the Media seem worlds apart. The latter pursues the "instant", and is focused on passing the message without "heavy" technicalities. The former is repulsed by the idea of the "instant". On the contrary, Courts' actions take the form of "processes", a set of acts tending to an end, no stranger to ritualistic procedures to gain certainty.

Any lawyer - once again, we use our own national example - faced with a judicially related news will conclude easily that the message loses integrity, and judicial reality is, therefore, distorted.

Here are some examples (taken randomly and freely translated):

Público, 22.09.2005

Defendant to remain in custody

(...) the judicial hearing of the confessed murderer, with businesses in the construction area, was led by a Public Prosecutor (....).

NOTE: Público is one of the biggest newspapers in Portugal. The above-stated news lacks some rigour. In Portugal a judicial hearing is always led by a Judge, although with the mandatory presence of the Public Prosecutor.

http://www.inverbis.net/tribunais/julgamento-por-furto-de...-creme.html

Trial news 04.05.2007

"The trial will cost the State hundreds of euros, but still, the Public Prosecution Office has insisted in supporting the indictment. The 70 year old defendant (...) may have to pay the cream that already has given back Lidl: some €3.99, plus interest rates.

It is a ludicrous case (...).

(...) [The Public Prosecution Office] concluded the case was serious enough to stand at trial. Despite knowing, obviously, that the costs of the criminal action would be excessive, and supported by the State, given the defendants lack of economical means to face them".

NOTE: The news article reflects a complete ignorance of the powers of the Public Prosecution Office. It does not discuss how "obvious" it should be that such a case should otherwise be dismissed due to the associated costs, and the age of the defendant. It does not discuss the duties of legality that bind the Public Prosecution Office vs. the legal mechanisms that the Portuguese law allows in order to dismiss the case, and if in such a case it was possible to make use of them, or not.

Agência Lusa, 26.06.2008

"The Public Prosecutor stepped back from his earlier indictment of 24 defendants in the Apito Dourado case, yesterday morning, in Gondomar, withdrawing the indictment in the cases of Valente Mendes, Sérgio Sedas and João Mesquita, and three others".

NOTE: Once again, it is not discussed what "withdrawing" an indictment means. By law, the Public Prosecution Office is bound to ask for an acquittal if it believes that not enough evidence was brought before court concerning the defendant's culpability, or that he is indeed innocent. But a Public Prosecutor cannot formally withdraw an indictment.

Jornal de Negócios, Fernando Sobral

"The Portuguese justice system likes to practice the effective game of the Russian roulette. And so, in a frivolous way, it is shooting its remaining neurons."

Our purpose was never to point fingers to its authors, but to bring into light an obvious conclusion: the Media do not fully understand the judicial system while the judicial system is unable to communicate properly.

The Media have, therefore, to acknowledge that such matters need specialized treatment. And the Judiciary needs to acknowledge that it needs to pass a message in a more clear way, starting with every individual magistrate, and institutionally, in a much less reactive, but more proactive, following up of mediatic events.

In reality, in the absence of an institutional response by the justice system, and in a world made of hermetic language, and ritualistic procedures, the Media tend to create their own narrative of events in order to fully give the public what it craves for. News reporters often "chase" the highest ranking Portuguese magistrates searching for "that official explanation", "that official truth", but are confronted with those magistrates' lack of strategies to deal with the Media in an institutionally neutral zone. There is neither a credible speaker nor an institution to deal with the relationship between Media and Courts. And, therefore, to the public debate, in the absence of those "official truths", commentators of every kind, law professors, attorneys, reporters, are invited to participate. Often, as it is normal in law related debates,

they engage in highly subjective points of view that the public, unfamiliar to them, tends to be suspicious of.

In the absence of such strategies, the public suffers from *information overload*, a concept used in economics literature to designate the situation by which the consumer, dealing with several sources of information, often conflicting, about the quality of a product, does not decide rationally when choosing to buy one or another. In our matters, the citizen feels even more distant from a system that derives its legitimacy from the people as it is impossible for them to fully understand it.

It is not, therefore, surprising that discussions regarding an hypothetical *crisis of the justice system*[9] are closely linked to mediatic cases. Simply puting it, mediatic cases stress the fragilities of the system, and force the public opinion to conclude that something is wrong.

It is in this context that the majority of citizens, who has never even entered a court of law, has some kind of contact with its activities…

3) The problems of cohabitation: risks and grips

Popular justice is probably the most dangerous risk presented by the dynamics of the relationship between the Media and the Courts. As popular justice grows in importance, so do Courts lose institutional dignity.

It cannot be granted to the public opinion, through the Media, the power to determine the outcome of trials. The independence of the Judiciary must also be protected against popular justice. The fears and anxieties of the public opinion can become a problem to the system, as the system itself is unable to emerge as an authorized source of "truth", or in other words, whenever the system is ineffective in securing the respect for its decisions, and explaining them to the general public.

As a former Attorney-General, Cunha Rodrigues, so eloquently put it, some of the risks associated with the popular justice must not be ignored:

- the increasing gap between reality and public opinion;
- the erosion of the rule of law;
- the trivialization of the justice system;
- the creation of a public opinion court;

Also, nowadays, infotainment, or information with characteristics of entertainment, is a constant in the Media. There are some TV shows, like Judge Judy, or People's Court in the USA, and our very own, now gone, O Juiz Decide (the judge decides), that function as narratives that try to mimic judicial activities.

In such a highly competitive context, criminal justice has received overwhelming attention. The Casa Pia process, a Portuguese case related to institutionalized sexual abuse of children has occupied 2/3

[9] By "crisis of justice" we address a common mainstream issue in Portugal and, as far as the authors know, in the western world. In the last few years, it has been stated by the mainstream Media and political actors, that the justice system is suffering from a deep crisis, despite the lack of coherent conclusions about the essence of such a crisis.

of Portugal's news agents' headlines during a period of 4 years, and it has received 325 hours of attention by the main TV news (one of those channels alone, TVI, counting 36.2% of the total headlines).

Once again, one has to recognize that it is through the Media that the public opinion is willing to participate in the administration of justice and that the Judiciary also has to focus on better passing the message through the same channels, for there are reasons to believe that the majority of the public are what Sara Pina calls informational citizens, or those citizens that do not provide context to the information received, therefore, working as mere sponges (contrary to informed citizens).

IV. CONFLICT REDUCING STRATEGIES

1. Collective strategies

As Boaventura de Sousa Santos, we defend that platforms of cooperation must be created. We suggest an integrated approach:

1). Press/Communication Offices: they would be in charge of communicating, in general terms, and cooperating with the individual sources of information. Magistrates, for example, would have a channel of communication with specialized communication officers, and receive support when needed, thus reducing magistrates' communicational stress, respecting the boundaries posed by the duty of secrecy. Ideally, they should work in the Superior Councils for both Judges and Public Prosecutors, and be composed of both magistrates and specialized workers;

2). Training of magistrates towards communication: it seems unavoidable that a certain change in the cultural paradigm must be undertaken. A magistrate in the 21st century must acknowledge that, despite having to deepen his legal technical skills, it is also crucial that he is able to reach the citizens, ultimately, his source of legitimacy;

3). Legal reporters: Law reporting should be seen as a specialized area, and should be treated as such by the main Media, specially the news agents. Having a law editor, in charge of information connected with judiciary matters, should be a main goal as a way of reducing nowadays quality of information obvious levelling down;

4). A non-binding general agreement[10]: as a way of creating a compromise towards better cooperation, and create a healthy exchange of experiences, the main judicial authorities (and above everything, when enacted, the Press/Communication Offices), and the main Media representatives (specially, the news agents) should agree on a step-by-step policy of further improving communication of justice. Steps could be programmed within a reasonable timetable (so, for example, the Media could agree

[10] Specific institutional implications, as for example, the concrete institutions implicated, or the role of the Ministry of Justice, were ignored, as it is our objective to launch a discussion, not define, as it could not be the case, real policies.

that in x years, journalists covering legal matters would have y hours of legal training and all should designate Law Editors; the Magistrates representatives could agree that in x years they would have a Press/Communication Office…).

We can point some examples of what has already been done:

a) In Portugal

i. There is a free and universal service provided by the following website: www.dgsi.pt. This service allows a quick search of a number of decisions about various law areas.

ii. The website www.justicatv.com broadcasts several conferences/meetings related to the world of law. This is being updated on a daily basis.

b) Comparative Law

iii. In Brazil, in 2002 the television channel TV JUSTIÇA was created by the Brazilian Federal Supreme Court. It can also be seen online at www.tvjustica.jus.br. This channel intends to be a communication space between the citizens and all the legal agents such as lawyers and prosecutors. This way, the audience can remain in contact with the world of justice and learn how to fully understand their rights. TV JUSTIÇA aims to inform, enlighten and broaden access to justice. According to the website, "…our biggest goal is to broadcast TV shows that expose a global vision of Justice with all the diversity that it contains". To make this happen, there was a constant worry to make the shows accessible to everyone, using a clear and simple language. The need to create this channel arose from the existing void in the mainstream channels to address legal matters. Considering that the format generally used in the traditional news broadcasts is not compatible with the professional and deep treatment and investigation required by legal issues, this channel intends to serve that purpose.

iv. In some USA court rooms an electronic information service was installed to serve the public and inform them of the court's and the judge's agenda, the rooms where the trials will occur, etc. These devices are similar to the ones existing in airports and are an alternative way to provide services in a quick way and without the interference of human resources.

v. The creation of the "Legal Information Institute" also in the USA made possible for the general public to access information about the legislation currently in force.

c) Comparative Law – European Perspective

vi. The Court Service (a state agency that controls most of the English and Welsh Courts) developed the "Court Service Information Kiosk", which provides information through automatic kiosks.

vii. Other devices created to inform the public are phone lines and online services to answer and enlighten the users' doubts and complaints.

viii. In the UK, the use of social judges in several law areas, especially in the Lower Courts (Magistrates Court). In this type of courts, only lesser causes are judged, including crimes punished up to 6 months of prison or £ 5.000 penalty. Social Judges are chosen among the average citizens of each

community and their goal is to apply justice in an alternative way allowing their peers to get involved in the decision making process.

ix. In the Netherlands, the "Administration of Justice in the 21st century" program intends to modernize the legal system through the implementation of the "Electronic Desk Judicial Organization". This program aims to overcome the geographical barriers that make access to justice more difficult.

x. In the Basque country, the Documental Information System was created to form a Case Law database easily accessible by everyone.

2. Individual strategies:

Very wisely, in our view, the Brazilian Code of Civil Procedure, in its article 156 states that "in all acts and terms of the process it is mandatory to make use of the vernacular". It is as though the Brazilian legislator long ago acknowledged that it is crucial to prevent the creation of *communicational barriers*, thus electing the use of the vernacular as a high, but fair, price to pay.

We believe in a set of individual measures to be taken by the magistrate to reduce such a risk of a communicational barrier. We suggest the COSI approach:

- ***Creativity:*** when necessary to pass a message, a magistrate should find creative ways to do so, in order to minimize the posed risks.
- ***Objectivity:*** the magistrate must always pose himself the question if the acts presided by him are understood by the medium citizen, and avoid unnecessary subjectivities;
- ***Simplicity***: the magistrate must confront his own erudition, accepting that outside the Academia, most importantly, to render justice needs the same sort of public adherence;
- ***Instrumentality:*** language is instrumental to the final objective of a process, no its main purpose;

3. The magistrate as the manager of a (potentially) mediatic process

Besides what already was discussed about the individual strategies to undertake in order to reduce what was defined as justice's communication difficulties, the authors would like to introduce the above stated concept, as a conceptual model, that takes into account the magistrates active role in the mediatic process, rather than a purely passive one, with respects to both the negative and positive constraints he faces daily. It cannot simply work without, at least, some of the collective approaches, as it presupposes a solid institutional approach.

A mediatic process can be defined as:

- any case with a given value to the Media (because of its informational potential, or entertainment potential);

- the ultimate end is either to inform, or entertain, according to the perceived public interest associated to the case;

- its transition from an anonymous process to a mediatic one can be unexpected, and its dynamics cannot be controlled by the respective magistrate;

- once the process becomes mediatic, no longer will the respective magistrate be able to control the mediatic aspects related to it;

In fact, facing the potential attention given by the media to a certain process, a magistrate can equate his duties to the maximum and ignore his role as an active agent in the mediatic process. He can also engage in this process and therefore equate to maximum the public participation in justice. Or, he can optimize both values in confrontation and construct an active role in the mediatic process that both respects his duties, and keeps the public perfectly informed, or at least, reducing the information overload/communicational gap.

The suggested optimizer position takes into account that every magistrate's act is potentially mediatic. Hence, who has never met with news reports, for example, about what could be called a legal nonsense. In Portugal, for example, some years ago, it was widely reported a mistake by a courts clerk that notified a dead person in this quality (addressing a notification to the person, as a dead person) in what was perceived as of public interest when in fact it is discussable if such nonsense should be given any attention at all. But this unpredictable aspect of cases brought to courts makes it even more unstable to the magistrate, and stress the need for strategies of control.

How can that magistrate in particular, however, know "ex-ante" that a case that he is responsible for will be given mediatic attention? And knowing it, what can he do to cope with it, and have an active role as previously stated?

As a contribution, this conceptual model is worried with the rationalization of the magistrate's role in the mediatic dynamics and with his responsibility in informing and educating the public, without the risks of a justice as a form of entertainment.

In such a model, the magistrate should be able to predict, in a given situation before him, its bigger or lesser mediatic potentiality. Making use of a personal scale, the magistrate should be able to do it in the following manner:

1) in a list, there would be indicated the main characteristic elements of a mediatic case (so, for example, some types of crime, as sexual crimes against children, and others, would be given points related to it's high probability of mediatic attention, and minor offences, would be given less points; and as such, so it would happen in the case of other elements, like the notoriety of the victim or the defendant, or the objects used, as guns, etc...);

2) each element would compute points given to it, depending on its given perceived value to the Media, and so, higher values would relate to higher mediatic potentiality, and so on;

3) the perceived value is changeable, and it could be so if the magistrate, in his view, accepts that a given element is growing in mediatic attention;

4) the total of points should characterize the case as probably highly mediatic or not, in at least three scales: high, medium and low;

5) such an analysis, by the magistrate, should be done in his first contact with the case, and in any case, as soon as the case is given mediatic attention;

What would the magistrate, and the justice system, gain with such an approach?

First, it embodies a change in the paradigm. No longer has the magistrate to see himself as a passive agent, but an active one, with respect to his deontological duties. Individually, the magistrate should be able to be even more rigorous in adopting individual strategies in order to reduce the complexity of its acts, thus reducing the danger of distortion by the media (if a given written sentence obeys a logic of simplicity, it will become more simple to the Media to inform the public about it). In a stable institutional setting of communication of justice, he could be able to communicate with Communication Offices, that would be in charge of organizing files with all the important data concerning the potentially mediatic case (with the respective magistrate's contacts, and a summary about the situation), and would be responsible for communicating to the public, through written statements and press conferences, whenever it becomes advisable.

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