The inefficiency of the justice in Portugal: Causes and consequences

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Abstract

Given the breach of trust that the justice system in Portugal is facing, it is fundamental to analyse the reasons why the judicial system is considered inefficient. This study contributes to the identification of the underlying factors that contribute most to the inefficiency of justice in Portugal by analysing the frequency of the most relevant contents enunciated by the participants. The survey consists of two parts: the first consists of the following socio-demographic variables: occupation, region, age, gender and remuneration; the second consists of an open question, to which participants can state which factors contribute most to the ineffectiveness of justice in Portugal. The answers obtained were submitted to a content analysis with the aim of identifying the content underlying the inefficiency of justice in Portugal, with 18 subcategories emerging according to the contents expressed by the participants. In this way, the way above all of simplification, justice will go to what really matters: efficiency, celerity and transparency.

Keywords: Justice, inefficiency, transparency, judicial systems.

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1. Introduction

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

2. Methods and participants

2.1. Procedure

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

2.2. Participants

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

2.3. Material

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

2.4. Content analysis

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

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

- **Pre-analysis**—It consists of the organisation of the material, operationalisation and systematisation, choice of documents, formulation of hypotheses, objectives and elaboration of indicators and initial reading.
- **Examination of the material**—Exploratory analysis that consists of codifications and classifications, and is characterised by being a long and tedious phase and requires the work of a team, in which its members act as judges of the work of codification and thematic classification.

- **Treatment of the obtained results and interpretation**—It consists of the tabulation and application of descriptive techniques of analysis.

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

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

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

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

2.5. Statistic methods

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

3. Results

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

3.1. Sample characterisation

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

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

Table 1. Characterisation of respondents by professional category

Professional category	*n*	(%)
Judge	12	25
Lawyer	22	45.8
Bailiffs	14	29.2
Total	48	100

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

The average age of the respondents is 37.88 (standard deviation (SD) = 8.35), exhibiting an amplitude of 36 years of age (minimum = 25 and maximum = 61). It shows an asymmetry (0.54) and a kurtosis coefficient (0.04) within the normality criteria, thus indicating that the values of this variable distribute normally. When analysing the average age by gender, it was found that the average age of males (M = 40.24) was slightly higher than that of females (M = 36.04), but there was no statistically significant differences between the genders (sig. = 0.08; gl = 46). In turn, the analysis of the average age by the professional category revealed statistically significant differences (Sig. = 0.02; F = 3.96; gl = 2) between the three groups, the highest being that of bailiffs (Table 2). After the analysis *post-hoc* with the Scheffe test, there was only one statistically significant difference in average age between the group of bailiffs and the group of lawyers (df = 7.21; Sig. = 0.03; confidence interval = 95%). Finally, in relation to the average ages by demographic region, although there were no statistically significant differences between the three groups, the South was the region that revealed a higher average age (M = 40.07) and a greater age dispersion (SD = 11.34) when compared to the other two regions (Table 2).

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

Sociodemographic characteristics	Age	
	M	SD
Gender		
Female	36.04	7.46
Male	40.24	9.01
Professional category		
Judge	39.58	10.68

Lawyer	34.50	7.32
Bailiffs	41.71	5.59
Demographic region		
North	37.44	7.63
Centre	36.44	5.85
South	40.07	11.34

In regards to remuneration, it can be seen that the lowest wages (≤2,000 euro) happen more frequently in the women's group (20 women *vs* 11 men). While, higher wages (≥2,001 euro) tend to be more frequent in the men's group (10 people) than in the women's group (seven people) (Table 3).

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

Sociodemographic characteristics	Monthly Remuneration								Total (%)
	≤1,000 euro		1,001–2,000 euro		2,001–3,000 euro		≥3,000 euro		
	N	%	*N*	%	*N*	%	*N*	%	
Gender									
Female	8	29.6	12	44.4	3	11.1	4	14.8	100
Male	3	6.3	8	16.7	5	10.4	5	43.8	100
Professional category									
Judge	0	0	3	25	3	25	6	50	100
Lawyer	5	22.7	9	40.9	5	22.7	3	13.6	100
Bailiff	6	22.9	8	41.7	0	0	0	0	100
Geographical region									
North	8	44.4	6	33.3	4	22.2	0	0	100
Centre	2	12.5	8	50	2	12.5	4	25	100
South	1	7.1	6	42.9	2	14.3	5	37.5	100

If we take into consideration the professional class, the highest salaries belong to the classes of judges (nine people) and lawyers (eight people), with no case being registered in the class of bailiffs. The number of judges earning more than 3,000 euro is double than that of lawyers (six people *vs* three people). On the other hand, when analysing the salaries by wage category, it is possible to determine that remunerations between 1,001 and 2,000 euro are those that occur more frequently (20 people).

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

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

Subcategories	*N* = 48	
	N	%
Bureaucracy		
Yes	36	75.0
No	12	25.0
Excessive legislative production		
Yes	28	58.3
No	20	41.7
Slowness		
Yes	26	54.2
No	22	45.8

Lack of staff		
Yes	26	54.2
No	22	45.8
Lack of working conditions		
Yes	25	52.1
No	23	47.9
Inadequacy of IT resources in the judicial system		
Yes	21	43.8
No	27	56.3
Lack of preparation/training of the judicial staff		
Yes	21	43.8
No	27	56.3
Excess of processes		
Yes	13	27.1
No	35	72.9
Legislation inadequate to reality		
Yes	10	20.8
No	38	79.2
Poor collaboration between judicial staff		
Yes	9	18.9
No	39	81.3
Lack of work incentives		
Yes	7	14.6
No	41	85.4
Excessive use of dilatory procedures		
Yes	7	14.6
No	41	85.4
Little use of alternative means of conflict resolution		
Yes	6	12.5
No	42	87.5
Complete unaccountability of legal practitioners		
Yes	6	12.5
No	42	87.5
Inequality of access to justice		
Yes	6	12.5
No	42	87.5
Politicisation of the judicial system		
Yes	5	10.4
No	43	89.6
Acceptance of the sense of justice of the decision		
Yes	5	10.4
No	43	89.6
Lack of knowledge in access to justice		
Yes	4	8.3
No	44	91.7

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

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

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

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

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

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

4. Conclusion

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

Why this slowness?

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

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

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

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

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

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

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

Of course, this is not done without national awareness and mentalisation. It is the question of 'believing again' that it is urgent to energise.

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

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