

REVISTA CIENTÍFICA ACERTTE
ISSN 2763-8928

THE PATH TO PUBLIC POLICIES' REFORM DEFINITION. THE CASE OF THE PORTUGUESE JUDICIAL SYSTEM

O CAMINHO PARA A DEFINIÇÃO DA REFORMA DE POLÍTICAS PÚBLICAS. O CASO DO SISTEMA JUDICIAL PORTUGUÊS

EL CAMINO HACIA LA DEFINICIÓN DE LA REFORMA DE LAS POLÍTICAS PÚBLICAS. EL CASO DEL SISTEMA JUDICIAL PORTUGUÉS

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e210101
https://doi.org/10.47820/acertte.v2i10.101

PUBLISHED: 10/2022

ABSTRACT
Reforms imply changes, introduce new ways of planning, execution, and evaluation. It may also entail modernization and the introduction of innovative processes, which can be disruptive, and incremental, but always considering the challenge that rises in the beginning: governance ability. Therefore, the variables such as maintaining or increasing (ideally) efficiency, considering democracy, stability, the scope and nature of institutional structures most always be in the process. The paper analyses the definition of public policies reform, being the Portuguese judicial system the case study. Having that in mind, in its sections, the paper considers different dimensions of the modernization and reform process, namely, the drivers that motivate reforms, the path followed, the key moments and the key actors of the reforms, and, finally, the impacts of the reforms.

KEYWORDS: Public policies. Reform. Modernization. Governance. Portuguese Judicial System.

RESUMO
As reformas implicam mudanças, introduzem novas formas de planeamento, execução e avaliação. Podem também implicar modernização e introdução de processos inovadores, que podem ser mais ou menos disruptivos e incrementais, mas sempre considerando o desafio que surge no início: a capacidade de governança. Portanto, variáveis como manter ou aumentar (idealmente) a eficiência, considerando a democracia, a estabilidade, o alcance e a natureza das estruturas institucionais, quase sempre estão no processo. O artigo analisa a definição de reforma das políticas públicas, sendo o sistema judicial português o caso de estudo. Tendo isso presente, nas suas seções, o artigo considera diferentes dimensões do processo de modernização e reforma, tais como, os motores que motivam as reformas, o caminho percorrido, os momentos-chave e os atores-chave das reformas e, finalmente, os impactos das reformas.

PALAVRAS-CHAVE: Políticas públicas. Reforma. Modernização. Governança. Sistema Judicial Português.

RESUMEN
Las reformas implican cambios, introducen nuevas formas de planificación, ejecución y evaluación. También pueden implicar la modernización y la introducción de procesos innovadores, que pueden ser más o menos disruptivos e incrementales, pero siempre teniendo en cuenta el reto que se plantea al principio: la capacidad de gobernanza. Por lo tanto, variables como el mantenimiento o el aumento (idealmente) de la eficiencia, considerando la democracia, la estabilidad, el alcance y la naturaleza de las estructuras institucionales, están casi siempre en el proceso. El artículo analiza la definición de la reforma de las políticas públicas, tomando como caso de estudio el sistema judicial portugués. En este sentido, el artículo considera en sus secciones diferentes dimensiones del proceso de

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modernización y reforma, como los motores que motivaron las reformas, el camino recorrido, los momentos y actores clave de las reformas y, por último, los impactos de las mismas.

PALABRAS CLAVE: Política pública. Reforma. Modernización. Gobernanza. Sistema judicial portugués.

INTRODUCTION

Reforms are always challenging. They force individuals and institutions to accept the change of something, perform that change and then do things the way they were newly defined, which requires adoption to those new ways of doing (which usually comes with some resistance).

Furthermore, reforms may also imply that different sectors are involved, in an interdependent way. One cannot promote reforms without consider all the individuals that will benefit from them, but that will be affected as well; without consider all the dimensions (economic, financial, social, political, etc.), the sectors (public, private) and the institutions, being those the direct, but also the indirect involved ones (CHARBIT, 2020; TREIN; MAGGETTI, 2020).

But for a reform to make sense and to be accepted by all the involved ones, there must be a reason (or several and different ones) for it to happen, reforms need to have a meaning and people must envision a motive (or several) for that reform to happen. It is important for people to understand why they should change things, being those changes sometimes very disruptive, which implies new learning processes. If that does not happen that way, reforms may encounter some resistance and the process would be more painful.

Another aspect is the explanation of the path followed by the reforms. For people who is involved in reforms it is important to perceive the change and how is it going to happen: the phases, the ones involved in each phase, which instruments will be relevant, the processes, the resources needed, etc. That way reforms will be easily accepted.

Connected to that it is the understanding of the key moments of the reforms. This will inform about the period when the reform occurs, how long will it take, when will it start, and when will it end. The definition of this period is important in order to know the human, material and economic resources one will need to perform the changes.

And the key actors who will perform that change, who is directly and indirectly involved, who will be affected, which connections must be considered are also relevant dimensions, since those allow everyone to understand their role and their impact in the whole process of change and in each one of the phases.

Finally, the impact is one of the most relevant dimensions to be perceived. What impact do the changes and reforms envision for that specific public policy, for the ones involved and for the territory? What will minor impacts be? Which are the impacts that will immediately be felt, and which ones will be felt only in the future? Are any externalities thought? How will they be included in the reform process? And these are some of the questions that helps to understand the impact the answer to the

previous questions has in the definition of public policies' reform. Which impact? is the ultimate question since it aggregates all the answers.

This paper analyses the path that a definition of a reform of public policies takes, specifically the reform of the Portuguese judicial system. The paper is organized into seven sections. The first one presents a brief review of the Portuguese judicial system modernization, perceived as a public policy. The sections two to six will answer those questions previously identified. And section seven explains the methodology.

For this paper interviews conducted to key informants placed at the level of the public policies' definition will be analyzed and results will be explored. Also, official document analysis was conducted, and the results will be exposed.

1 PORTUGUESE JUDICIAL SYSTEM MODERNIZATION AND REFORM. BRIEF HISTORICAL REVIEW

In the context of the present paper, Portuguese judicial system is being analyzed as a public policy. As a holistic solution, with impact in individuals' lives and in society management. A policy because it is offered as a way of solving problems, in an aggregated set of solutions, which are present since the individual birth, it includes their social relationships throughout life and end with their death. Public because they are solutions only offered by the State (at least those analyzed here). Furthermore, a system that influences public policies, taking directly (through the Constitutional Court, for example) or indirectly decisions on public policies (TAVARES, 2019, p. 23).

Therefore, the specific public policy is perceived as a process of solving problems. However, the identified problems only result in the development and implementation of a public policy if they are relevant in terms of number of people it affects (SECCHI, 2011, p. 2). Consequently, two conditions must be present for a problem to be considered public: when political intersubjectively actors consider it a problem, and when it affects a considerably number of people in a nefarious way (SECCHI, 2011, p. 7-8). This also implies that the exclusions (meaning, the decision not to solve one problem at the expense of another) are themselves a public policy, because it also implies a public decision (even if it's a non-decision) and because it will also and inevitably affect a considerable number of people (BAPTISTA; POCINHO; NECHITA, 2019, p. 80).

According to Filipe Teles (2020), the last 45 years of democracy (after what has been 41 years of dictatorship regime), the implementation of new practices in the public sector can be characterized by a clear slowness, which was contradicted only by the gradual introduction of new simplification, modernization, citizen proximity, efficiency and transparency processes (TELES, 2020, p. 446-447). However, the author also believes (just like Ongaro (2009) already did) that these processes are being introduced in a micro level of the public management, which does not imply that there was no impact at a macro level (TELES, 2020, pp. 448-449).

As for the Portuguese judicial system modernization and reform the reality was no different from the public administration in general. Dias (2016) analyzes the effects the democratization

process had on the Portuguese judicial system changes, obviously, after the Revolution of the 25 April 1974. The author concludes that the reforms were more prominent on a theoretical level than on a practical one, more visible in what legislative means was concern, than in courts or even in the application of those legislative tools. That way, one of the major conclusions the author achieves is that a change in the Portuguese legal culture is not only necessary, but mandatory to favor the reform of the judicial system as a whole (DIAS, 2016).

Considering this, Martinelli (2005) and Smith (2003) defined the essential aspects when analyzing modernization processes throughout history. Those are: (1) science and technology development; (2) which contribute for industrialization, that in the reverse direction contributes for modernization; (3) the interdependence between Nations (as a result of the globalization and which in the Portuguese case even more relevance gains, for its integration in a European Union); (4) the constant search for functions' specialization and differentiation; (5) frequency of social mobility situations, mostly at the class system level (increasingly diffused nowadays); (6) political development; (7) secularization; (8) development of new values such as individualism, rationalism and utilitarianism (or at least their emphasis); (9) urban environments increase; (10) privatization of family life; (11) democratization of education, and development of a mass culture and consumption; (12) development of communication tools, which make it possible to shorten distances between people and territories; (13) and compression of time and space (MARTINELLI, 2005, p. 10).

These characteristics are interconnected and are all influenced by one another. And, as it can be easily understood, gain a privileged space when it comes to analyze the Portuguese judicial system and its historical evolution and modernization. For example, science and technology development was crucial for judicial processes and procedures informatization; the integration of Portugal in the UE has greater influence in the way its judicial system is trying to reduce bureaucracy or to give more efficient responses; family privatization contributed for the creation of specialty courts, etc.

In the characterization proposed by Edoardo Ongaro (2009), Portugal is placed as (1) a system of multiple political parties and the organization of majority governance conventions, with a strong government when faced with the need to legislate; (2) the civil service assumes the role of employment policy, which contributes to the increase size of the public sector, contrary to the global trend. Trade unions also play a significant role in public employment policy; (3) accentuated dimension of politicization at the top, albeit with relatively distinct careers; (4) diffusion of patronage practices; (5) the geographical origin of civil servants is uniform; (6) existence of a strong regulatory framework and the abolition of the figure of the mayor; (7) centrality of administrative law; (8) weak civil society; (9) sources of advice in public policies are historically mostly internal, with increasing openness to moments of international and academia reflection (ONGARO, 2009, p. 215-219).

According to the author, all the characteristics indicated above contribute to undermine the efficiency, transparency, proximity, and innovation of the public sector. Being quite visible and important values such as those related to traditionalism. But having the public employment also a

relevant weight. Moreover, the Law plays an important role in the definition and (not) allowing the modernization process, being its starting point, which translates into slower reform processes. In the specific case of the Portuguese judicial system, and since the sentences are applied having the Law as its guide, this algo contributes for a slower, bureaucratic, and complex system (in comparison with the systems where judgements are conducted having the specific case in mind – justice applied to the concrete case) (ONGARO, 2009).

If one analyses the Portuguese Constitutional Governments official documents that provide information on the pluriannual decisions, since 1975, it is possible to conclude that there has been an increase interest in investing in the judicial system reform. Whether by changing processes, intensify and clarify legislation, decrease infrastructures, include Information and Communication Technologies in most of the processes, etc.

In fact, modernization, innovation and rationalization were concepts quite associated to the main economic activities. In this sense, there was the need to modernize agriculture and fisheries, services and Public Administration in general. There was also the urge to modernize and innovate educational programs and curriculums.

From the 7th Constitutional Government program (1981), the title of the document includes the modernization of society, and one may consider that this has to do with the integration of the Internet. In fact, it is included in the document the legislative modernization, in order to deal with fiscal, economic and commercial demands.

In the 8th Constitutional Government program (1981-1983) the modernization process was associated with the European integration. But there were no news regarding to the sectors that would be the focus of that process. And that was the path followed by the next three Constitutional Government programs.

However, in the 12nd Constitutional Government program (1991-1995) Justice modernization appears explicitly, with the informatization of the services provided to citizens (such as registrations and notary) being a specific modernization project. From this point on, modernization is always present at the Justice level, whether applied to the services, to the internal procedures (for example, communication channels), to the reform of the Judiciary Police, the Courts, to the magistrates' training, and to the legislative reforms as a whole.

For the achievement of this conclusions, two analyses were performed: the first one was the understanding of the Constitutional Government programs since the first democratic regime (1976-1978). In this analysis it was important to add the variable Pedroso, Trincão and Dias (2003) suggest, namely, the Type of reforms one was dealing with. There was a period of great instability, reflected at various levels: social, economic, political, legislative… Which did not favor the modernization processes, since the goal was to achieve, precisely, that stability of those areas and of the Country.

However, when this stability started to be seen as possible, the documents predicted the modernization process at a more intrinsic and ambitious level. Also, this was a result of the European integration demands.



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The second analysis followed the Martinelli's guidelines (2005, p. 29).

Both analyses completed each other and were important for the understanding of the Justice modernization process in the past 45 years.

2 METHODOLOGY

The paper focus is the Portuguese public policies' reform definition, specifically the judicial system, perceived as a public policy.

To achieve the goal of analyzing the path taken to modernize public policies in Portugal, the paper followed two complementary techniques: document and interviews' analysis.

The documents selected were the ones that stablish the great lines for Government ruling: Constitutional Government programs, since 1976 until 2023. The period is the one, in Portugal, that has available Constitutional Government programs, since the period before that followed a dictatorship, and after 1976 democracy was instituted.

22 documents were analyzed, specifically the judicial system modernization. In fact, the focus was the understanding of the most important guidelines the Government followed and that is present in tables 1 and 2.

In this analysis, one also intended to understand the evolution of the judicial system modernization over the years, the EU role in the entire process and the interconnection between actors and departments. Martinelli's analysis grid was a great instrument to achieve the goal.

After that, it was possible to complement the information retrieved from the documents with interviews. These took place between March and July 2021, must of them online (the only ones that were written, because of agenda difficulties, were the ones of the Minister of State Modernization and Public Administration and Minister of Justice.

All the interviews were recorded and transcribed and follow the guidelines of data protection and consent forms. Table 1 shows the interviews conducted.

Table 1. Conducted interviews

Contact/Key informant	Period	Government role
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

3 DRIVERS OF THE REFORMS

From the analysis of the tables attached, meaning, from the analysis of the 22 different Constitutional Government programs, it is possible to conclude that there was a clear transformation regarding the Government priorities. If, after 41 years of dictatorship, the focus was to provide a sense of stability at the various dimensions of society: economic, political, internal and external. This focus changed when the need to become a member of an international/European organization emerge. And then there was the world economic crisis which brought other different needs and priorities. And, consequently, different modernization paths were followed throughout the years.

As Fonseca and Carapeto (2009) claim:

> "[…] *public administration reform process is a global phenomenon, which includes organization and management reforms and political system reforms (politics) and of some important policies* […]. *In some countries, this movement was named reinventing government, in others new public management, and in many others State modernization or reform, always assuming that this should be redesigned to perform a set of fundamental functions with competence and quality.*"[1] (FONSECA; CARAPETO, 2009, p. 75).

So, the reasons why modernization processes and reforms of Portuguese public administration occur are different and related to many factors: to the need of distinguish dictatorship from democracy; to answer to external demands; to respond to a crisis period and/or to follow other Countries and their economies.

The interviewees explain some of the motivations for the public administration modernization, specifically the judicial system:

> "*The main goals of administrative modernization were accessibility, transparency, the existence of a single interlocutor (physical or digital) in the State's relations with citizens and companies, and the rationalization of State resources.*" Alexandra Leitão, Minister of State Modernization and Public Administration.
> "[…] *the main motivation has to be to better serve citizens and companies, right?! And we have that vision of the State, of someone who is sitting and acting in a monolithic way, but, in fact, the main motivation of the people who work here is to provide public service and it has to be that way, without ever stop being like that.*" João Farinha, Advisor of the Secretary of State for Digital Transition.
> *"Meeting these demands* [greater efficiency and transparency, agility and speed in the resolution of processes, or even in the responsiveness and readability of services for the citizen] *has been the touchstone for the modernization of Justice, which requires a new innovative thinking and practices that place the needs of people and businesses at the center of justice institutions, policies and services.*" Francisca Van Dunem, Minister of Justice.

4 PATH FOLLOWED BY THE REFORMS

According to Hood (1991) and Dunleavy and Hood (1994), the late 1980s, early 1990s witnessed the transition from a traditional or 'progressive' public administration to a New Public

[1] Translation provided by the authors.

Management (NPM). The characteristics pointed out by Gray and Jenkins (1995) to this NGP are the tendency to obscure or eliminate the distinction between the public and private sectors (government as a company) and to treat the public sector as homogeneous; more flexible and adaptable organizations with flatter and more focused structures that encourage entrepreneurship rather than bureaucratic management and more flexible personnel regimes; reinventing government with structures that are mission rather than rule-driven, decentralized and entrepreneurial; the current political system being inefficient. And what was previously viewed as positive (bureaucratic routines and professional codes of conduct) is evaluated as costs rather than benefits (GRAY; JENKINS, 1995).

Although there is, in fact, a gap between what would be NGP's objectives and what is implemented at the macro level, this does not mean that at the micro level there are no innovative and changing processes, of adaptation to new societal demands, with processes' flexibilization and use of new information and communication technologies (ONGARO, 2009, p. 240-241). This is evidence in the Portuguese judicial system. Courts are perceived as sovereign bodies, heavy structures, but at the meso and micro level, as well as their structure and organization have undergone changes over the last few years, which justify consider that there is a combination of tradition and modernization.

"What is perceived as a policy problem? How and when does a policy problem get on the government's agenda? And why are other problems excluded from the agenda?" (JANN; WEGRICH, 2006, p. 46) are some of the questions that pop-up when it comes to understand how public policies modernization is defined.

For those questions to be answered, it is relevant to analyze interviewees' discourse:

> "*We did it* [improve the quality of public services provision] *with the instruments identified above, not only in a participatory, transversal and innovative way, but above all with an inclusive concern, trying not to leave anyone behind, with complementary and adjusted solutions to the target*." Alexandra Leitão, Minister of State Modernization and Public Administration.
> "[…] *the most important part we have to do when talking about judicial system modernization is first realize what the situation is, what the problems are and, above all, try to find quick solutions, but always with the protagonists, because otherwise the relationship of trust will get lost*." Anabela Pedroso, Secretary of State for Justice.
> "[…] *the path began with the preparation of an action plan, ambitious, but pragmatic, transversal and participatory, which organized thought and execution, allowing us to follow the entire process of digital transformation that was intended to be built*." Francisca Van Dunem, Minister of Justice.

As Jann and Wegrich (2006) conclude: "During this stage of the policy cycle, expressed problems, proposals, and demands are transformed into government programs. Policy formulation and adoption includes the definition of objectives — what should be achieved with the policy — and the consideration of different action alternatives." (JANN; WEGRICH, 2006, p. 48).

For this to occur, Bridgman and Davis (2003) proposed a model. The authors believe that "A policy cycle starts with a problem, seeks evidence, tests proposals and puts recommendations before Cabinet. Its outcomes are subject to evaluation and the cycle begins again." (BRIDGMAN; DAVIS,



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2003, p. 102). This model can be seen in figure 1 and follows a circular path and, for that reason, it is never fully completed, because when the modernization process (or the policy definition) is in its evaluation stage, new issues are identified.

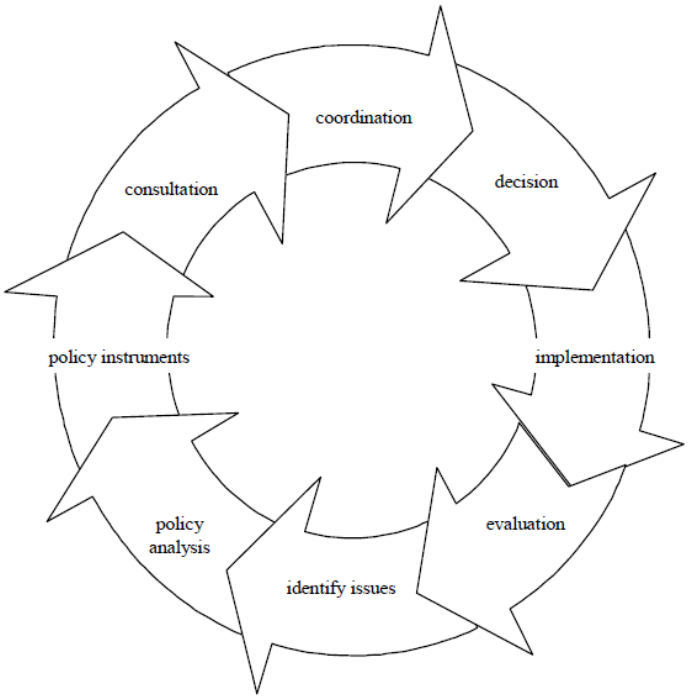


Figure 1: The Australian Policy Cycle (Bridgman and Davis 2000:27) cit. in (Bridgman & Davis, 2003, p. 100)

5 KEY MOMENTS OF THE REFORMS

One of the questions interviewees were asked was in which time horizon they thought the challenges the public administration modernization (and the judicial system reform and modernization, in particular) impose would be fully addressed. Meaning, in how many years they believe the challenges and/or obstacles would have a full response.

Against all odds the given answers did not exceed the five years' time horizon. In fact, considering all the work that has already been done in the past 47 years (if one has in mind the end of the dictatorship regime - 1974) or 35 years (if one considers Portuguese EU integration - 1986), it is understandable that the interviewees believe that all the challenges that are perceived as relevant in the present moment (or the major ones at least) would be addressed in such short time. Moreover, the legislature period is stablished in four years, which make it harder to define a modernization or reform program for a more extended time horizon.

However, it is not hard to convey that modernization, innovation, and reforms are continuous processes, that do not cease to happen, whether by changes in leaderships, or because new tools are included in society. In the case of the last 25/30 years Information and Communication Technologies have been playing an important role and will continue to do so.



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In fact, the year of 1986 marks the period when a more complex and broad process starts: the designated Europeanization, defined by the way the Portuguese EU integration molds and influences the decisions (macro and micro) that are taken at various levels.

Europeanization, considered as a process that gives dynamism to the changes operated at the public policies' various levels (micro, meso and macro), also implied a certain pressure so that reforms and modernization of various public sector entities could take place (ONGARO, 2009, p. 238-239). Within these is the Portuguese judicial system.

> "*I would say that we support everything we are doing in what are the regulations, the principles, which is the basis that the European Union has given us. Because, in the context of the judicial system, the e-Justice Action Plan, the entire strategy that we have been developing in Portugal is supported by what, in Europe itself, was being done even in the context of European networks, of the action program of electronic justice. Even the funds come from that area. Justice is very transversal from this point of view, but also to the criminal area, in the context of the PJ* [Judiciary Police] *it was also very linked to all the European Union principles. Therefore, I would say that Portugal would not be in the current stage, from the point of view of technologies in Justice, if it didn't have this great support, which was the management and regulation that came from Europe itself*." Anabela Pedroso, Secretary of State for Justice.

But when will the current modernization challenges be fully addressed? The interviewees answered in the following terms:

> "*But I think maybe in 3 years' time, I'm being a bit optimistic and I'm thinking about the recovery and resilience plan, if you look at the plan*, […] *the version that was discussed in public session has there I think 267 million of investment in Justice. If you are going to see this page, it is digital. This, of course,* […] *the importance of Europe here is evident*. […]" Rui Batista, Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office.
> "[…] *in terms of the next 4 to 5 years, we will have the resources to make some fundamental interventions in terms of modernization and, therefore, it will be, in fact... We will manage to implement many projects that were in the drawer for a long time. Now, it is also a challenge to execute*." João Farinha, Advisor of the Secretary of State for Digital Transition.
> "*Justice, as you know, is one of the few ministries that has been contemplated with this great modernization program, we have around 270 million to be able to modernize Justice from one end to the other. But this technological modernization, I'm only sure that it will be successful if I have capable people to be able to do the work, so our first investment is there, in creating internal conditions for improvement, training, project management, what we call PMOs, etc. It is the great work that we are, at this moment, starting in Justice*." Anabela Pedroso, Secretary of State for Justice.

As one can perceive, in the present moment, at the level of Justice modernization, the discussion takes place around the recovery and resilience plan, which, in simple terms, is the European Union funding to elevate Countries from the crisis caused by the pandemic. To what Portugal is concerned, the modernization of Public Administration, in general, and Justice, follows the path of providing the technological means to transform them to accomplish the values of: simplification, streamlining, de-bureaucratization, dematerialization, rationalization, efficiency,



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openness, participation, proximity, transparency, among many others. Values that are in line with the structure of NPM (GRAY; JENKINS, 1995).

6 KEY ACTORS OF THE REFORMS

The question "Who?" when the goal is to understand the people involved in the definition of public policies and/or its modernization hardly will have only one answer or one person to identify. As Blom-hansen (1997) states: "Formulating and implementing policies is seen as involving increasing numbers of different institutions and organizations. Interdependencies prevail. Responsibility is diffused. At the same time, coordinated action is seen as more and more necessary as the societal problems get more and more complex." (BLOM-HANSEN, 1997, p. 670).

What is being studied in the paper is the public policies' modernization defined by the central government and some of its different units (specifically, Ministries with a role in defining the judicial system modernization). But in this research, it is of great relevance the role of the network created between the European Union and that central government, being most of the more important guidelines of the judicial system processes' modernization decided at a European level.

Thus, this implies that, in addition to the guidelines' emanation and collaboration and top-down interoperability (EU-Government), also bottom-up direction will have to be considered, with the network established at the level of the central Government and the local judicial system (Courts, Public Prosecutor, JP, etc.).

As several interviewees confirm:

> "*Interoperability is the great challenge and at the same time the great opportunity that the Public Administration will have to face in the future.*" Alexandra Leitão, Minister of State Modernization and Public Administration.
> "[…] *this is the strategy, and that is why interconnection is also fundamental, we want and we are in gradual articulation to create interconnection structures with the digital systems of our main partners, who we know who they are, the criminal police bodies by nature, Judicial Police, Public Security Police, Republican National Guard, but also, for example, we now have another project, the AMA* [Administrative Modernization Agency], *which is part of this linking strategy. We want our computer system to be coherent with other digital systems. There are many public services that are behind, but that are all investing in digitization right now, to link with our system.*" Rui Batista, Coordinator of the Information Systems Coordination and Project Monitoring Offices of the Attorney General's Office
> "*One of the things that is essential and that gave rise to UMIC* [Knowledge Society Agency], *that had its origin in AMA is the need for services and digital information and services, etc. work in coordination. Because one of the biggest Government problems is the Ministries separation and the existence of General Directorates, each one with the "King in his little farm" and not communicating. And, therefore, one of the great tools of information technology organization of the State must be sharing and working together, and many steps have been taken in this direction.*" Joaquim Costa, Secretary of State for Administrative Modernization (between June 2011 and October 2015).

Back in 1986, when defining an agenda for the study of institutions, Ostrom already shared this idea of the importance of communication between actors and how and why their functions should

be well defined. The author identified the following areas that must be studied with seven classes of rules stating relations between participants, positions, actions, and outcomes:

> *(1) Position rules which specify a set of positions and how many participants hold each position.*
> *(2) Boundary rules which specify how participants are chosen to hold these positions and how participants leave these positions.*
> *(3) Scope rules which specify the set of outcomes that may be affected and the external inducements and/or costs assigned to each of these outcomes.*
> *(4) Authority rules which specify the set of actions assigned to a position at a particular node.*
> *(5) Aggregation rules which specify the decision function to be used at a particular node to map actions into intermediate or final outcomes.*
> *(6) Information rules which authorize channels of communication among participants in positions and specify the language and form in which communication will take place.*
> *(7) Pay-off rules which prescribe how benefits and costs are to be distributed to participants in positions.* (OSTROM, 1986, p. 17).

Sociological institutionalism already pointed out the importance of communication and its role in generating, deliberating, and/or legitimizing ideas about political action in institutional context (SCHMIDT, 2011, p. 76).

In this section it is also important not to forget the role of EU, perceived as an actor that not only finance plans and programs, but also that defines politics, instruments, and paths.

> "*I would say that we support everything we are doing in what are the regulations, which are the principles, what is the basis that the European Union has given us, because, in the context of the judicial system, e-Justice Action Plan. The entire strategy that we have been developing in Portugal is supported in Europe, in what is being performed in the context of European networks, in the action program of electronic justice, even the funds come from that area*." Anabela Pedroso, Secretary of State for Justice.
> "*But all this collaborative work, informed between States, is also putting issues on the agenda, which are key issues for modernization, such as the need to guarantee interoperability between the States' digital service platforms, so that we can have cross-border services that feed the European Single Market, like the security and privacy rules...*" Maria de Fátima Fonseca, Secretary of State for Innovation and Administrative Modernization.
> "*There is pressure from the European Union to modernize through funds. And the funds have very precise purposes. Funds is not receiving money to be used as you like; it is receiving money to achieve the intended goals. And in the matter of State modernization, the objectives were indirect, that is, the European Union does not give money for the State to modernize itself, as if this were an end. It gives money for the State to modernize, because this is essential for the competitiveness of the economy* […]." Joaquim Costa, Secretary of State for Administrative Modernization (between June 2011 and October 2015).

7 IMPACTS OF THE REFORMS

The study and understanding of public policies' impact has been taken for years now and in several dimensions (BÖRZEL; RISSE, 2007; BELADI; SINHA; KAR, 2016; BATISTA; DOMINGOS, 2017; BOSWELL; SMITH, 2017). The relevance of measuring impact is related to the capacity of

understanding if a specific implemented policy produced the expected results and/or if it has resulted in different and unexpected consequences.

For that evaluation, the definition of a public policy must envision its impacts from the start. And how that public policy and its results would be evaluated. That is to be possible its measurement and its change (if the results are negative).

As Alexandra Leitão states, challenges' anticipation is a way of predicting impact and it has a relevant role in the definition of a modernization process:

> "*It should be remembered that modernization processes and practices are fundamentally centered on innovation in policies for welcoming and attending to citizens and companies, administrative communication, simplification of procedures, involvement of interested parties and the production and processing of information for management. These diverse components contribute to the continuous improvement process of the administration, which has to be responsive to contemporary needs and trends, while being able to anticipate and subsequently plan responses to future challenges.*" Alexandra Leitão, Minister of State Modernization and Public Administration.

So, the territory and its residents, public policy' users, but also the ones that are going to implement it should be involved in the definition process, not only in the way of understanding how they are going to deal with the public policy that is being defined (in the specific case of this paper, the judicial system modernization), but, and most important, how the modernization process will affect their lives and the territory.

Nowadays, changes and its impact in the present, but also in the future; minor and major impacts, externalities; inclusion of those impacts (negative and positive) in the definition process of future public policies; the ones impacted; decisions on how to deal with minor and major impacts; etc. are all parameters considered when public policies are defined. And most of them because of European imposition.

The interviewees' discourses already include this impact dimension when they exemplify the definition of a public policy, as something that is inherent:

> "*Occurred by the end of 2019, I think this small innovation of trying to perform the digital transition, but with a comprehensive vision for the governance was a key moment. In the previous Government, and despite still being a relatively small project with little impact, the creation of an experimentation laboratory and the introduction of design thinking methodologies and greater participation of citizens and of civil servants in the processes' design, in their redesign, in creating new public services and, therefore, the creation of the LABx[2], even though it is a very small project and whose impact is still far from what it should be, I would also highlight as an important milestone.*" João Farinha, Advisor of the Secretary of State for Digital Transition.

The previous questions result on the consideration of the impact relevance. The definition of why, how, when and who allows the measurement and evaluation of the impact at all those levels and the definition of new (or old but changed) public policies to diminish negative impacts and/or

[2] https://labx.gov.pt/?lang=en



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externalities. And this is quite relevant when it comes to define judicial system processes' modernization, mainly because of the vulnerability that citizens face when they have to look for a problem solution in Justice.

CONCLUSIONS

The path to the definition of public policies' modernization is very complex and follows many directions. The first reason for that is the obvious existent complexity in the unit of analysis. Even if this unit is reduced (which it was, to the judicial system), it also includes many parameters, actors, instruments and connections.

The paper followed a line of understanding that path by considering the origins and by trying to answer the basic questions. So, after a brief historical review of the Portuguese Judicial system modernization and reform, where some of the projects developed in the judicial system were mentioned, but, and most important, the elemental Government documents were analyzed, the goal was to be able to answer the questions that all projects need to answer to find the path which must be followed. That way, one believed it would be possible to understand what was in the basis of the modernization process definition.

The documents' analysis allowed to conclude that there were some relevant milestones that must be highlighted: the first Constitutional Government program, from 1976, which was the beginning of a democratic regime in Portugal. This document, more than a working one, can be considered as an important manifest, which distinguish from what were the beliefs and the living until that period.

Understandably, the next following years were political unstable, with succeeding Governments, a lot of changing and refreshing ideas, but with hard time making them possible. However, those years were of great importance, since they allowed the Country to perceived which way to follow.

After 1980, there was this major goal to integrate the European Union, and this marked the political, economic, social, juridical, and cultural ambitions. The integration occurred in 1986, but the Country needed to be prepared for this. And this is something that still happens nowadays, with the European guidelines being followed in order to be part of that Union.

Then, after several years of trying to grow and gain stability, in 2008/2009 a world crisis erupted and changed all the priorities. Finding answers to social problems was the major one and all the other dimensions followed this one.

Finally, in 2019, like the entire world, the Country was devasted by the COVID-19 pandemic. Even though Portugal seemed better prepared than for the 2009 crisis (and being part of EU turned out to be decisive), in a time when it was trying to find its automatic pilot regarding the modernization processes, and the inclusion of technologies, the pandemic forced this to happen, whether in education, politics, economics, and (to what the paper is concerned) judicial system.



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After this analysis, it was time to answer the questions which would allow to understand the definition process basis when it comes to modernize the judicial system: why modernize? How to do it and when? Who should be involved in the process? And what impacts are expected?

Relevant for answering those questions, was the analysis of the conducted interviews with key informants, placed at the level of the modernization definition process, whether at a broader stage (Public Administration), or even at a more restricted one, the judicial system.

The answer to the question why modernizes and why do it at the judicial system level is related to the necessary evolution that system requires. People look for transparent, closer, understandable, and efficient answers to their problems. Judicial system modernization helps to meet that need.

The question how is one of the most complex since the way modernization was conducted followed several and different paths. However, the goal was always one, allow citizens to have access to Justice, being this the possibility to understand the system and being part of it in a comprehensive way.

Being most of the modernization plans defined for the legislature period (4 years), most of the modernization processes are drawn for this time horizon. But there was a change felt at this level. If, in the first Constitutional Government programs, the plans followed exclusively this period. Mostly, since the beginning of 2000, one may find a continuity between programs. These ones did not start from scratch, they continued the work already started and appropriate public policies that found to be useful. This was a major change in the mindset.

Regarding the question: who should be involved? The answer is: everyone. Meaning, everyone which is directly and/or indirectly involved in the modernization process. All the professionals (judicial professionals), but also the citizens, academics, political decision makers, and the EU. And this happens at an interdependency dimension, meaning there are several departments, from different areas involved and consulted.

Finally, the impacts sum up the previous questions and answers. It is from the answers given previously that the impacts are thought and revealed. It is for the impacts that the questions are placed, and it is also for them that the answers are searched. But, for that, the plan must start by defining what will be measured and evaluated and how. The major goal is always to have positive impact in people's lives, mostly because it includes sensible matters the main modernization processes defined, the ones involving judicial subjects.

Finding answer to the questions highlights a similar motive: being part of the EU implies modernization, new ways of governance, and all the requirements this also entails: transparency, proximity, efficiency, simplification, and efficacy. When it comes to define modernization processes to apply to the judicial system, this EU integration and its principles and values must be considered from the beginning.

REFERENCES

BAPTISTA, J. M. L.; POCINHO, M.; NECHITA, F. Tourism and Public Policy. **Bulletin of the Transilvania University of Brasov. Series V: Economic Sciences**, v. 12, n. 1, p. 77–86, 2019. Retrieved from: http://10.0.124.182/but.es.2019.12.61.1.11.

BATISTA, M.; DOMINGOS, A. Mais que boas intenções: Técnicas quantitativas e qualitativas na avaliação de impacto de políticas públicas. **Revista Brasileira de Ciências Sociais**, v. 32, n. 94, p. 1–24, 2017. DOI: https://doi.org/10.17666/329414/2017.

BELADI, H.; SINHA, C.; KAR, S. To educate or not to educate: Impact of public policies in developing countries. **Economic Modelling**, v. 56, p. 94–101, 2016. DOI: https://doi.org/10.1016/j.econmod.2016.03.016.

BLOM-HANSEN, J. A "New Institutional" Perspective on Policy Networks. **Public Administration**, v. 75, n. 4, p. 669–693, 1997. DOI: https://doi.org/10.1111/1467-9299.00080

BÖRZEL, T. A.; RISSE, T. Europeanization: The Domestic Impact of European Union Politics. *In*: JØRGENSEN, K. E.; POLLACK, M.; ROSAMOND, B. (Eds.). **Handbook of European Union Politics**. London: SAGE Publications, 2007. p. 483–506.

BOSWELL, C.; SMITH, K. Rethinking policy 'impact': four models of research-policy relations. **Palgrave Communications**, v. 3, n. 1, p. 44, 2017. DOI: https://doi.org/10.1057/s41599-017-0042-z.

BRIDGMAN, P.; DAVIS, G. What Use is a Policy Cycle? Plenty, if the Aim is Clear. **Australian Journal of Public Administration**, v. 62, n. 3, p. 98–102, 2003. DOI: https://doi.org/j.1467-8500.2003.00342.x.

CHARBIT, C. From "de jure" to "de facto" decentralised public policies: The multi-level governance approach. **British Journal of Politics & International Relations**, v. 22, n. 4, p. 809–819, 2020. DOI: https://doi.org/10.1177/1369148120937624.

DIAS, J. P. The transition to a democratic Portuguese judicial system: (delaying) changes in the legal culture. **International Journal of Law in Context**, v. 12, n. 1, p. 24–41, 2016. https://doi.org/10.1017/S1744552315000373.

DUNLEAVY, P.; HOOD, C. From old public administration to new public management. **Public Money and Management,** v. 14, n. 3, p. 9–16, 1994.

FONSECA, F.; CARAPETO, C. **Governação, Inovação e Tecnologias - O Estado rede e a Administração Pública do Futuro**. Lisboa: Edições Sílabo, Lda, 2009.

GRAY, A.; JENKINS, B. From Public Administration to Public Management: Reassessing a Revolution? **Public Administration**, v. 73, n. 1, p. 75–99, 2009. DOI: https://doi.org/10.1111/j.1467-9299.1995.tb00818.x.

HOOD, C. A public management for all seasons? **Public Administration**, v. 69, n. 1, p. 3–19, 1991. Retrieved from: http://newdoc.nccu.edu.tw/teasyllabus/110041265941/Hood NPM 1991.pdf.

JANN, W.; WEGRICH, K. Theories of the Policy Cycle. *In*: FISCHER, F.; MILLER, G. J.; SIDNEY, M. S. (Eds.). **Handbook of Public Policy Analysis.** [*S. l.: s. n.*], 2006. p. 43–62. https://doi.org/10.1201/9781420017007.pt2.

MARTINELLI, A. **Global Modernization**: Rethinking the project of modernity. London: SAGE Publications, 2005.

ONGARO, E. Trajectories of reform in France, Greece, Portugal, Spain: comparison and generalizations. *In*: **Public Management Reform and Modernization. Trajectories of Administrative Change in Italy, France, Greece, Portugal and Spain**. Cheltenham, UK: Edward Elgar Publishing, 2009. p. 201–246.

OSTROM, E. An agenda for the study of institutions. **Public Choice**, v. 48, n. 1, p. 3–25, 1986. DOI: https://doi.org/10.1007/BF00239556.

PEDROSO, J.; TRINCÃO, C.; DIAS, J. P. **Por Caminhos da(s) Reforma(s) da Justiça**. Coimbra: Coimbra Editora, 2003.

SCHMIDT, V. A. Reconciling Ideas and Institutions through Discursive Institutionalism. In **Ideas and Politics in Social Science Research**, p. 47-63, 2011. DOI: https://doi.org/10.1093/acprof:oso/9780199736430.003.0003.

SECCHI, L. **Políticas Públicas – Conceitos, Esquemas de Análise, Casos Práticos**. São Paulo: Cengage Learning, 2011.

SMITH, B. C. **Modernization and Political Development**. In Understanding Third World Politics. Theories of Political Change and Development. 2nd ed. Indiana, USA: Indiana University Press, 2003. p. 44–74.

TAVARES, A. **Administração Pública Portuguesa**. Lisboa: Fundação Francisco Manuel dos Santos, (2019.

TELES, F. Public Administration in Portugal. *In*: BOUCKAERT, G.; JANN, W. (Eds.), **European Perspectives for Public Administration:** the Way Forward. Leuven: Leuven University Press, 2020. p. 439–454

TREIN, P.; MAGGETTI, M. Patterns of Policy Integration and Administrative Coordination Reforms: A Comparative Empirical Analysis. **Public Administration Review**, v. 80, n. 2, p. 198–208, 2020. DOI: https://doi.org/10.1111/puar.13117.

UE. **Plano de Desenvolvimento Rural para a Região Autónoma da Madeira, Portugal**. Bruxelas: UE, 2007. Retrieved from: http://europa.eu/rapid/press-release_MEMO-07-605_pt.pdf.