

SMMP-PT

Paris Meeting

*Short Report on the
Portuguese Judiciary*

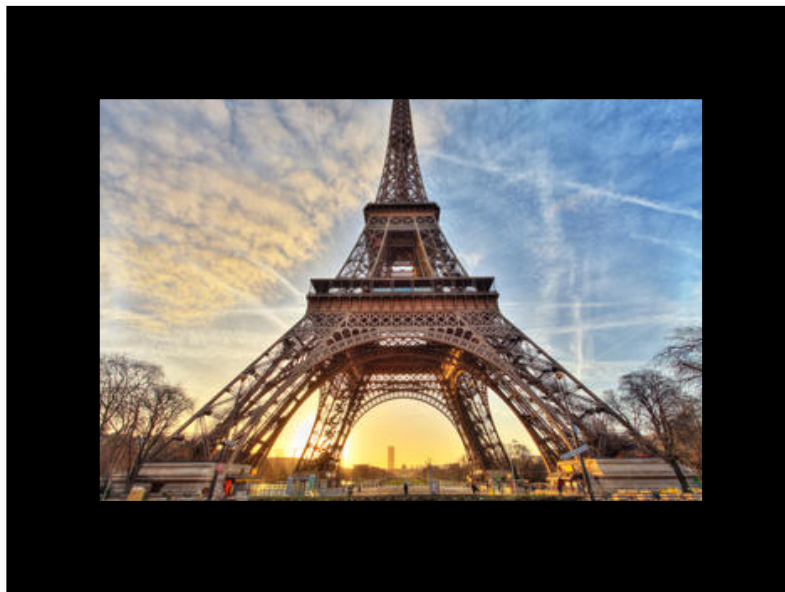
21-22 October 2016



Sindicato dos Magistrados
do Ministério Público

SMMP – PT

Short report regarding the Portuguese judiciary:



MEDEL - PARIS (FRANCE) - REPORT of SMMP - PORTUGAL

21-22 October 2016

Political context concerning Justice:

Regarding the recent calls presented by the SMMP to the government and to the Ministry of Justice we can highlight the following issues:

a. **The government's position towards the reinforcement of prosecutors risks to defy the autonomy and independence of public prosecution:**

The critical lack of prosecutors and judiciary staff persists although the opening of a new training course for prosecutors and judges last September.

The number of vacancies announced is less more than unreasonable (56 new places for prosecutors) when the public prosecution services are facing the actually need of more than 250 prosecutors. Every responsible actor, namely the government itself or the Superior Council of PP, recognizes those figures.

Despite being the Superior Council of PP the legitimized decision organ regarding the management of prosecutors, which is persistent claiming for the reinforcement of prosecutors and human resources, the government tries to justify the unjustifiable, calling down the strained financial and budgetary crisis or the overloaded of the training school. We also heard, not without amazed irony, the claim of risking a massification of the magistracy.

Nevertheless, we expect that judgement and common sense will prevail on this issue.

In the recent annual appointment and placement of prosecutors in courts, decided by the Superior Council of PP, the critical lack of prosecutors obliged the Council to sacrifice some of the most important principles of prosecutors statute: the stability of the appointment.

The SMMP reacted and appealed to the Administrative Superior Court, challenging the decision by injunction for interim protecting and preventing measures and will persist the proceedings on the substance.

Being constrained by the political power regarding the material and human resources it is the independence of the judiciary and the division of powers that are at stake and in serious danger.

The public prosecution has no financial autonomy, cannot manage it's own services or needs, including advisory services, always depending on budgetary charity.

Despite the official speech blazing the judiciary as a major pillar of democratic Rule of Law, the wording is still not an effective reality and, as we can see, who decides the shape and performance of Public Prosecution Services still is, indirectly, by the discretion of financial resources, the political power. That is a way of constraining justice, but with the handy gains of no direct political burden.

As we pointed out in recent meetings with the parliamentary parties, the political power can do that skewed option, but they should assume the inherent political consequences.

b. **The on-going reforms:**

The government proposed recently a small reform of the still recent judiciary organization, presented as punctual, trying to correct some dysfunctions related to the distance of public access to certain jurisdictions.

The SMMP presented its opinion in a critical report, applauding the strengthening of proximity, but mostly pointing out that the reform needed relevant financial resources and that the allocated funds were ridiculous.

We still point out that this reform or any other one continues to have an impossible wish: to meet efficiency or proximity with none or few financial resources, which is a bit of an impossible equation.

Nevertheless, the proposed small reform tends to deepen the managerial drift that is colonizing and changing the performance of justice, alienating and transforming justice and judges or prosecutors in a "zapping" service, a scoreboard of productivity an measuring, performance rated, competition mastered and managerial constrained by the reinforcement of hierarchical

logics, which engender in their various forms disinvestment and disempowerment of judges and prosecutors, gradually blowing the freedom and independence of adjudication, the professional status of judges and prosecutors and their ethics.

Another (everlasting) main concern of the board of the SMMP continues to be the legislative process related to the review of the statute of the Public Prosecution Service, which is beginning a new process after the unpleasant *final* the latest attempt met. The new ministry of Justice announced the establishment of a working group to present the project of the statute in 6 months. That deadline as gone...and the review of the statute is still a missed promise. Despite all that, the judicial organization is continuously changing, in a way that will faithfully steer the future review of the PP statute.

c. The encouragement of the President to settle a Pact for Justice:

In the recent opening ceremony of the new judiciary year, our President of the Republic urged the judiciary organizations and associations to present a pact for justice, pointing out the priority of dignifying justice.

That proposition relies on the idea that waiting for politicians to look properly to the justice system and its needs is meeting an everlasting disappointment since changes need to come “bottom-up”.

The challenge is of a lavishing kind and, nevertheless, the actors engaged (ASJP, SMMP, OA, OSAE, SFJ) are beginning to work together in that pact.

We shall see if some core issues, like the fight against corruption, the financial autonomy of the judiciary or the proper resources allocated to justice will have political response.

Regarding the latest corruption cases and the public perception of impunity or of different and soft justice for white colour crimes and corruption, the need of new legal instruments, like the Brazilian plea-bargaining used in the worldwide well known “Car-Wash” case, is beginning to be discussed in a public manner, but it appears to be ignored by politicians, who don’t seem to be interested in that discussion and already announced that no legislative initiative is to be designed.

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