Publications de l'Institut suisse de droit comparé
Veröffentlichungen des Schweizerischen Instituts für Rechtsvergleichung
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Publications of the Swiss Institute of Comparative Law

76

Mauro Bussani / Lukas Heckendorn Urscheler (eds)

Comparisons in Legal Development

The Impact of Foreign and International Law on National Legal Systems

Schulthess § 2016

Dário Moura Vicente*

Legal Reforms in the Context of the Financial Crisis: the Case of Portugal

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1. Portugal and the International Financial Crisis

The global financial crisis that erupted in 2007 had a deep impact in Portugal. Since the adoption of the euro in 2002, the country accumulated a considerable external debt, owed both by public and private institutions, notably banks. To a large extent, this was made possible by the low interest rates originally applied to the so-called Eurozone countries in international markets. As a consequence of the progressive downgrading of national debt by credit rating agencies, interest rates applied to the Portuguese Republic and to Portuguese banks escalated, eventually becoming unsustainable. This forced the Portuguese Government to request financial assistance from the European Union (hereafter EU) and the International Monetary Fund (hereafter IMF) on 7 April 2011.[1]

Portugal's predicament has been attributed by economists to the markets' lack of confidence in the Portuguese economy's ability to generate the resources necessary to satisfy the country's financial commitments. This, in turn, is due to the low GDP growth experienced by Portugal, as well as by several other European countries, in preceding years and to the loss of the country's economic competitiveness caused, among other factors, by rising labour costs and other structural problems, such as

* Professor of Law, University of Lisbon. The present text is an updated version of the paper presented by the author on 26 April 2012 at the conference held by the Swiss Institute of Comparative Law in Lausanne.

1 See, on this, PITTA E CUNHA, P., O Euro e a Crise das Dívidas Soberanas, *Revista da Ordem dos Advogados* (2011), p. 19 *et seq.*

the excessive size of the public administration, the slow functioning of the judicial system and the weak competition experienced in certain economic sectors.[2]

2. The Memoranda of May 2011

On 13 and 17 May 2011, the Portuguese Government adopted, respectively:

a. A *Memorandum of Understanding on Specific Economic Conditionality*, which was attached to a letter of intent addressed by the Minister of Finance and the Governor of the Bank of Portugal to the Eurogroup, the ECOFIN, the European Commission (hereafter EC) and the European Central Bank (hereafter ECB);[3] and

b. A *Memorandum of Economic and Financial Policies*, which was attached to a letter of intent addressed by the Minister of Finance and the Governor of the Bank of Portugal to the IMF.[4]

These Memoranda, the contents of which are substantively identical, describe an extensive program of legal and economic reforms to be implemented by the Portuguese Republic with the backing of external financial assistance requested to the said institutions in the total amount of €78 billion over a period of three years.[5]

That program was deemed necessary in order to raise the Portuguese economy's potential to generate growth and employment and to overcome the worsening of the financial conditions applied to the Portuguese Republic and to Portuguese banks in international markets within the context of the financial crisis.

Two thirds of the requested financial assistance were to be given by the EU under the European Financial Stabilization Mechanism and the European Financial Stability Facility; another third by the IMF under an Extended Fund Facility.

The legal nature of the said letters of intent and of the Memoranda attached to them, as well as of the promises to provide loans made by those institutions to the Portuguese Republic, is not clear. According to one possible view, each of them is a

2 See, e.g., *OECD Economic Surveys: Portugal 2012*, Paris 2012.

3 Available at http://www.portugal.gov.pt/media/371369/mou_20110517.pdf.

4 Available at http://www.portugal.gov.pt/media/371354/mefp_20110517.pdf.

5 That program was approved by Council Implementing Decision 2011/344/EU, of 30 May 2011, on granting Union financial assistance to Portugal (published in the EU Official Journal L159 of 17 June 2011, p. 88), subsequently amended by Council Implementing Decision 2014/197/UE, of 18 February 2014 (published in the EU Official Journal L107 of 10 April 2014, p. 61).

mere unilateral act; under another view, they are bilateral agreements falling under the category of international treaties.[6]

Whatever their exact nature may be, the documents at stake raise difficult problems. If they merely embody unilateral acts of the Portuguese Republic and of the abovementioned international institutions, they can be unilaterally revoked by their subscribers, since the rule *pacta sunt servanda* does not apply to them. But this would be contrary to their spirit and to the fact that the obligation to release the funds lent by the EU and the IMF is dependent upon the implementation by the Portuguese Government of the reforms set out in the Memoranda. If, on the other hand, they are true treaties, then they should have been ratified by the President of the Portuguese Republic and published in its official journal. Although under the Vienna Convention on the Law of Treaties this cannot be invoked by Portugal in order to refuse compliance, the treaties at stake are unenforceable by Portuguese courts, since the basic requirements for this, provided for in article 8 of the Constitution, have not been complied with.

The basic concern of this paper is not with the legal status and the international effects of the said Memoranda, but rather with the nature and impact of the legal reforms contemplated by them. We shall therefore concentrate on this point. One cannot, however, omit a note of apprehension regarding the informality with which such momentous commitments were undertaken by the Portuguese Republic and the said international institutions.

3. The Legal Reforms Envisaged by the Memoranda

Let's now turn to the contents of the legal reforms envisaged by the Memoranda. The reform package that they provide for comprises three types of measures:

a. *Fiscal measures*, including substantial costs reductions in the public administration and tax raises, aimed at the reduction of the budget deficit, which should reach 5,9 percent of the GDP in 2011, 4,5 percent in 2012 and 3 percent in 2013;[7]

b. *Financial regulation and supervision measures* aimed at safeguarding the financial sector, notably through the deleveraging and recapitalization of Portuguese banks; and

[6] See CORREIA BAPTISTA, E., Natureza jurídica dos Memorandos com o FMI e com a União Europeia, *Revista da Ordem dos Advogados* (2011), p. 477 *et seq.*

[7] These deficit targets were subsequently revised upward to 5 percent of the GDP in 2012 and 5.5 percent in 2013; the values achieved were 6.4 in 2012 and 4.9 percent in 2013.

c. *Measures aimed at improving the Portuguese economy's competitiveness*, notably through structural reforms of the labour market, the goods and services markets, the housing market, the judicial system and the rules on competition and public procurement.

The legal reforms set out in the Memoranda essentially comprise the following:

a. An amendment of the Labour Law Code, in order to cut back severance payments, the amount of which in Portugal is generally held to be above the European average, as well as to facilitate individual dismissals, to allow flexible working time arrangements, to reduce overtime payments and to regulate minimum wage increases;

b. The liberalisation of certain services, notably the provision of electricity and gas, as well as of telecommunications, postal services and transportation, *inter alia* through privatisations, the phasing out of regulated tariffs and the enhancement of regulators' independence;

c. The amendment of the law on urban leases, in order to promote geographical mobility of labour and to reduce families' indebtedness, as well as to enhance urban rehabilitation. This should be done by broadening the conditions under which the renegotiation of residential leases can occur, by restricting the transmission of the lease to relatives, by phasing out rent controls, by reducing prior notice for the termination of leases by lessors and by allowing the extrajudicial eviction of lessees in case of breach of contract.

d. The implementation of a new Judicial Map aimed at rationalising the court system by closing down underutilized first instance courts and creating new ones where they are needed;

e. The reduction of the backlog cases pending in Portuguese courts of first instance, which at the time of the Memoranda comprised about 1.5 million cases submitted to civil and commercial courts (1.18 million of which were enforcement cases). That reduction should take place, *inter alia,* through the establishment of separate chambers or teams for those cases, the restructuring of court record-keeping, the merging of cases, the imposition of additional costs and penalties against non-cooperative debtors in enforcement cases, etc.;

f. The creation of specialized courts for competition and intellectual property cases;

g. The revision of the Code of Civil Procedure in order to reduce the excessive average disposition time (which in 2012 ran up to 925 days in first instance courts, as opposed to 53 days in Austria and 91 in Denmark);

h. The adoption of a new law on voluntary arbitration;

i. The elimination of golden shares in publicly quoted companies;

j. The revision of the law on competition, in order to make it more autonomous from administrative and criminal procedure law and more harmonized with EU Law; and

k. The modification of the public procurement legal framework in order to eliminate certain exemptions permitting the direct award of public contracts.

4. The Reforms Adopted

This rather liberal reform package was negotiated and underwritten by a Socialist Government. Unsurprisingly, the Social Democrat and the Christian Democrat parties, then in the opposition, accepted the package in negotiations held before the Memoranda were signed. It has been up to these parties to implement the envisaged reforms after the June 2011 election, which they won with an absolute majority and after which they formed a coalition Government.

Three and a half years into the legal reform program, a considerable number of legal reforms have been adopted pursuant to the Memoranda. These include the following:

a. A new Law on Voluntary Arbitration ("Lei da Arbitragem Voluntária") was approved by Law no. 63/2011, of 14 December 2011.[8] This law is partly based on the UNCITRAL Model Law on International Commercial Arbitration, but it also draws inspiration from other recent European arbitration laws, particularly the German, the Spanish and the French ones. It introduces several innovations aimed at reinforcing the efficiency of arbitration as an alternative dispute resolution mechanism. For this purpose, the new law: (i) Broadens the scope of the disputes that may be submitted to arbitrators, which now comprise all those concerning patrimonial interests; (ii) Gives the arbitral tribunal priority over State courts regarding the decision on its own jurisdiction; (iii) Determines that arbitral awards are in principle not subject to an appeal; and (iv) Defers to the courts of appeal the jurisdiction to annul arbitral awards as well as to recognize foreign arbitral awards.

b. Decree-Law no. 67/2012, of 20 March 2012, created the Intellectual Property Court and the Competition, Regulation and Supervision Court. Both courts were installed by Ordinance ("Portaria") no. 84/2012, of 29 March 2012, respectively in Lisbon and Santarém. Their jurisdiction is nationwide. They have absorbed several competences previously held by commercial courts, which were

[8] See, on this law, RIBEIRO MENDES, A., A Nova Lei da Arbitragem Voluntária: evolução ou continuidade?, *Revista Internacional de Arbitragem* (2012), pp. 7 *et seq.*; MOURA VICENTE, D., *et al.*, *Lei da Arbitragem Voluntária Anotada,* 2nd ed., Coimbra 2015.

overloaded with cases. However, these courts have remained competent to decide all cases pending before them. The new Intellectual Property Court is competent to handle proceedings concerning notably: (i) Industrial property; (ii) Copyright and related rights; (iii) Domain names; (iv) Acts of unfair competition; (v) Company names; and (vi) Appeals from decisions of the National Institute for Industrial Property ("Instituto Nacional da Propriedade Industrial"), of the Foundation for National Scientific Computing ("Fundação para a Computação Científica Nacional") and of the National Register of Legal Persons ("Registo Nacional de Pessoas Colectivas"). The Competition, Regulation and Supervision Court is competent to handle proceedings concerning appeals from and enforcement of decisions rendered by the Portuguese Competition Authority ("Autoridade da Concorrência"), the National Authority for Communications ("ICP-ANACOM"), the Bank of Portugal ("Banco de Portugal"), the Commission for the Securities' Market ("Comissão do Mercado dos Valores Mobiliários"), the Regulating Entity for Media ("Entidade Reguladora da Comunicação Social"), the Portuguese Insurance Institute ("Instituto de Seguros de Portugal") and other independent administrative agencies exercising regulation and supervision functions.

c. The Code of Insolvency and Recovery of Companies ("Código da Insolvência e da Recuperação de Empresas")[9] was amended by Law no. 16/2012, of 20 April 2012. It gives judges broader powers to decide a number of issues, simplifies formalities and procedures and creates a new *special procedure of revitalisation* ("processo especial de revitalização"), which is an alternative to insolvency in cases of debtors (companies or individuals) experiencing financial difficulties or imminent insolvency that are nevertheless capable of being recovered. In order to commence a revitalisation procedure, the debtor and at least one of its creditors must submit a written statement to a court, declaring that they intend to start negotiations aimed at the drafting of a recovery plan. All enforcement proceedings against that debtor are suspended while these negotiations are conducted; such proceedings shall be cancelled if a recovery plan is approved. Insolvency proceedings commenced against the debtor prior to the revitalisation procedure are also suspended in the course of the latter. The approval of the recovery plan requires a majority of the creditors' votes. In any event, the plan must be ratified by a competent court. The court's decision is binding upon all creditors, including those that didn't participate in the negotiations leading to the approval of the plan.

[9] On which see: EPIFÂNIO, M. R., *Manual de Direito da Insolvência,* 4th ed., Coimbra 2012; MENEZES LEITÃO, L., *Direito da Insolvência,* 5th ed., Coimbra 2014.

d. Decree-Law no. 178/2012, of 3 August 2012 (amended by Decree-Law no. 26/2015, of 6 February 2015) created an *Extrajudicial Companies' Recovery System* ("Sistema de Recuperação de Empresas por Via Extrajudicial" or SIREVE), aimed at promoting the recovery of companies in financial distress, through the conclusion of an agreement with the holders of at least 50% of its debts. The procedure, which is is an alternative to insolvency proceedings, is mediated by the public agency for competitiveness and innovation (IAPMEI). It extinguishes all proceedings aimed at the collection of debts commenced against the company by creditors that sign the agreement.

e. A new Competition Law ("Regime Jurídico da Concorrência"), meant to allow that antitrust rules are more effectively enforced in Portugal, was approved by Law no. 19/2012, of 8 May 2012. It draws some inspiration from other reforms of national competition law, such as those carried out in Germany (in 2005), Spain (in 2007), France (in 2008) and Greece (in 2011). The new law gives the Portuguese Competition Authority broader investigation powers. These include searches and seizures of documents in the domicile of partners or shareholders, directors, employees and collaborators of companies and associations of companies. Such acts must nevertheless be authorized or validated by a judicial authority. The Competition Authority may also conduct inspections and audits in any companies or associations of companies, which must be notified 10 days in advance. While performing its functions, the Competition Authority may now assign different degrees of priority to the issues it has to deal with, according to an *opportunity principle* which replaces the legality principle previously adopted by the law. Under the new law, concentrations of companies must henceforth be notified to the Competition Authority: (i) When, as a consequence thereof, a market share equal to or exceeding 50 percent of the national market for a given good or service is acquired, created or reinforced; (ii) When a market share between 30 and 50 percent is acquired, created or reinforced and the turnover of at least two of the participating companies is higher than 5 million euros; and (iii) When the aggregate turnover of the participating companies is above 100 million euros and the individual turnover of two of the participating companies exceeds 5 million euros.

f. The Labour Code ("Código do Trabalho") has been amended several times since the Memoranda were signed.[10] Law no. 53/2011, of 14 October 2011, set up a new compensation scheme in case of collective dismissal of workers. By virtue of this law, dismissed workers are only entitled to 20 days of salary for each year

[10] For an analysis of the amended Code, see DRAY, G., *et al.*, *Código do Trabalho Anotado,* 9th ed., Coimbra 2012; PALMA RAMALHO, M.R., *Tratado de Direito do Trabalho,* Coimbra 2012; MENEZES LEITÃO, L., *Direito do Trabalho,* 4th ed., Coimbra 2014; MONTEIRO FERNANDES, A., *Direito do Trabalho,* 17th ed., Coimbra 2014; ROMANO MARTINEZ, P., *Direito do Trabalho,* 7th ed., Coimbra 2015.

of service. The salary considered for this purpose may not exceed 20 times the minimum wage and the total compensation may also not exceed 12 times the monthly salary. Only workers hired as of 1 November 2011 were, however, originally subject to these rules. Subsequently, Law no. 3/2012, of 10 January 2012, allowed two extraordinary renovations of employment contracts with fixed terms, which may now be extended up to an additional 18 months. This rule applied to all contracts ceasing their effects until 30 June 2013. A broader reform of the Labour Code became possible after a tripartite agreement was reached between the Government, trade unions and employers' associations. Law no. 23/2012, of 25 June 2012, carried out that reform by adopting several measures aimed at reducing the rigidity of the Portuguese labour market and the cost of labour. These included: (i) An easier dismissal of workers in the case of *extinction* of the worker's position (to which previously existing mandatory selection criteria no longer apply) and of *failure to adapt* to that position (which is now deemed to occur whenever a continuous reduction of productivity or of the quality of the work performed by the employee has taken place); (ii) A reduction by half of the additional payments due for *overtime work* (which now amount to 25 percent in the first hour, 37.5 percent in the subsequent hours in business days and 50 percent in weekends and public holidays), as well as the elimination of compensatory rest periods; (iii) The extension of rules concerning the reduction of *severance payments* to contracts concluded before 1 November 2011 (although those rules only apply to the compensation owed for the period of employment after that date); (iv) A reduction of the minimum number of paid holidays (which are now 22 in all cases) and of public holidays (two civil holidays and two religious ones having been eliminated as of 1 January 2013); (v) The creation of a *bank of hours* directly negotiated between workers and employers, allowing an extra two daily working hours in peaks of work; and (vi) A broader possibility of concluding *firm-level collective agreements*. Law no. 69/2013, of 30 August 2013, introduced further changes in the Labour Code, aimed at reducing severance payments due to workers for the lawful termination of employment contracts, which were set between 12 and 18 days for each year of duration of the contract. Law no. 70/2013, of 30 August 2013, established a severance payment guarantee fund, which aims at ensuring payment of amounts thus owed to employees. Law no. 27/2014, of 8 May 2014, again amended the Labour Code, by establishing more precise criteria for the selection of workers that may be dismissed in the case of an extinction of working positions and by restricting the dismissal for the worker's failure to adapt to cases in which a compatible position is not available in the company. Finally, Law no. 55/2014, of 25 August 2014, introduced a further set of amendments in the Labour Code concerning collective labour agreements, the survival period of which was reduced to twelve months after they have been terminated in order to induce greater dynamism in collective bargaining; such

agreements may henceforth be also suspended in case of business crises caused by market, structural or technological factors or by catastrophes or other occurrences that seriously affect the normal activity of the company.

g. The Public Procurement Code ("Código dos Contratos Públicos") was modified by Decree-Law no. 149/2012, of 12 July 2012,[11] which eliminated some of the pre-existing exemptions from the scope of application of the Code, concerning, e.g., institutions of higher education, hospitals and State laboratories. That Decree-Law has also restricted the number of situations in which a direct award of public contracts may take place: this may now occur in the case of provision of services up to € 75.000 and of construction works up to € 150.000. Additional works and services performed under a previously adjudicated contract may henceforth not exceed 40% of the contract price.

h. A reform of the law on urban leases was carried out by Law no. 31/2012, of 14 August 2012, which modified the Civil Code ("Código Civil"), the Code of Civil Procedure ("Código de Processo Civil") and Law no. 6/2006, of 27 February 2006, which contains the New Regime of Urban Leases ("Novo Regime do Arrendamento Urbano").[12] It provides for the phasing out, within a 5-year transitory period, of the rent freezes that still apply to older leases. A new scheme was set up in order to facilitate rent increases, which should in principle be based upon the agreement of the parties. Special rules were however provided to protect certain categories of lessees, such as those aged 65 or more, handicapped persons, micro-entities and non-profit organisations. The transmission of the lease was restricted to spouses or other persons living with the lessee for more than a year. Contracts may henceforth be terminated in case of a delay ("mora") in the payment of rents exceeding two months or of repeated delays in payment exceeding 8 days each. Contracts without a fixed term may now be terminated by lessors with two years' prior notice (instead of five years, as previously required). The new law created a *special eviction procedure* ("procedimento especial de despejo"), taking place before an extrajudicial entity, the *National Lease Counter* ("Balcão Nacional do Arrendamento"). It is an expedited procedure in which a lessee whose contract has been terminated, e.g. for lack of payment, is notified to leave and pay the overdue rents within 15 days. If the lessee opposes the eviction, or if he refuses to leave the rented premises, the jurisdiction to decide the case and to allow the entry of public authorities in his domicile remains, however, with State courts. Subsequently, Decree-Law no. 1/2013, of 7 January 2013, regulated the operation of the

[11] See, on this code, ESTORNINHO, M. J., *Curso de Direito dos Contratos Públicos,* Coimbra 2012.

[12] On which see GARCIA, M. O., *Arrendamento Urbano Anotado - Regime Substantivo e Processual (Alterações Introduzidas pela Lei N.º 31 de 2012)*, 3rd. ed., Coimbra 2014; MENEZES LEITÃO, L., *Arrendamento Urbano,* 7th ed., Coimbra 2014.

National Lease Counter; and Ordinance no. 9/2013, of 10 January 2013, approved the forms to be used in the said eviction procedure. Further amendments were introduced in the Regime of Urban Leases by Law no. 79/2014, of 19 December 2014, which aims at clarifying some aspects of the 2012 reform, in particular those related to the exceptional circumstances preventing the applicability of the new rules to old leases and hence the rent increases that the reform allowed (e.g. the fact that the lessee has 65 years of age or more or that it is a «microenterprise»).

i. Other measures, concerning in particular civil procedure and the judicial organization, were undertaken. On 26 June 2013, a new Civil Procedure Code, which entered into force on 1 September 2013, was published.[13] This is probably one of the most complex legal reforms undertaken in Portugal in the context of the Memoranda agreed with the EU and the IMF. The new Code aims at a simpler, more flexible and expedited civil procedure. Greater powers were given to judges in what concerns the management of cases. The number of different types of civil procedures was reduced and their regime was simplified. A greater emphasis was placed on oral proceedings: once the parties have filed their briefs, the proceedings are in principle concentrated on a preliminary and a final hearing. Postponements of hearings were severely curtailed. Proceedings in first instance are as a rule to be decided by a single judge. Facts and legal issues will no longer be decided separately. The enforcement of judgments no more requires separate proceedings and it will be subject to time-limits set out in the Code. New mechanisms of accountability for all participants in the proceedings were created.

j. On 15 June 2012, the Ministry of Justice published a document entitled *Strategic Lines for the Reform of the Judicial Organization* ("Linhas Estratégicas para a Reforma da Organização Judiciária"),[14] calling for a major reshuffle of the court system. It foresaw the extinction of a number of courts of first instance, among other measures aimed at rationalising that system. In principle, all courts with less than 250 new cases each year should be closed. Judicial districts should be aligned with administrative districts. Based on this document, and on the results of its public discussion, the Government prepared a bill that was passed by the Parliament and became Law no. 62/2013 of 26 August 2013 on the

[13] Approved by Law no. 41/2013 of 26 June 2013. See, on the new Code, LEBRE DE FREITAS, J., *Introdução ao Processo Civil. Conceito e princípios gerais à luz do novo código,* 3rd. ed., Coimbra 2013; id., *A Ação Declarativa Comum. À Luz do Código de Processo Civil de 2013,* 3rd. ed., Coimbra 2013; id., *A Ação Executiva. À Luz do Código de Processo Civil de 2013,* 6th ed., Coimbra 2014; GONÇALVES PINTO, R., *Notas ao Código de Processo Civil,* Coimbra 2014.

[14] Available at http://www.portugal.gov.pt/media/634714/20120615_linhas_estrategicas_reforma_organizacao_judiciaria.pdf.

Organisation of the Judicial System ("Lei de Organização do Sistema Judiciário").[15] It provides for the reduction of the number of existing district courts to 23 (each of which now has broader territorial jurisdiction), establishes a number of specialized courts with nationwide jurisdiction (the IP court, the competition, regulation and supervision court, the maritime court, the sentence enforcement court and the central criminal prosecution court) and implements a new model of management of district courts. This law was subsequently regulated by Decree-Law no. 49/2014, of 27 March 2014, which laid down a new judicial map ("mapa judiciário"). This reform package entered into force on 1 September 2014. As a consequence thereof, twenty courts were extinguished, 3.5 million cases had to be redistributed and about 80 million documents had to migrate within the Portuguese judiciary's electronic platform («CITIUS»); a complex task that required an exceptional suspension of procedural deadlines, which was determined by Decree-Law no. 150/2014, of 13 October 2014. On 31 December 2014 the "Instituto de Gestão Financeira e Equipamentos da Justiça" (IGFEJ) declared that all constraints regarding the use of the said platform had been overcome and that accordingly no impediments subsisted to the performance of procedural acts online.

5. The Impact of the Reforms on the Portuguese Legal System

An IMF Report released in October 2012,[16] after the 5th review aimed at assessing the compliance with the program was concluded by a joint EC/ECB /IMF mission (the so-called "*Troika*"), noted that "the reforms to date were significant – including, the removal of significant policy induced distortions in the housing, product, and labor markets". All the same, the report admitted that "the payoff to these reforms will only be evident over the medium-term".

A parallel report published by the European Commission on the same occasion[17] stressed that "good progress has been made in implementing the structural reform agenda in a number of areas such as services, regulated professions and judiciary reform". But it also stated that "further sustained efforts are required in several other areas to achieve the envisaged results".

More recently, after the 11th (and last) review, the IMF stated that "[s]ignificant progress has been made on structural reforms since the beginning of the program. Steps have been taken to make the labor and product markets more flexible; the

[15] On which see SALAZAR CASANOVA, J.F., Notas breves sobre a Lei de Organização do Sistema Judiciário, *Revista da Ordem dos Advogados* (2013), p. 461 *et seq*.

[16] See INTERNATIONAL MONETARY FUND, *Country Report No. 12/292*, 2012.

[17] See EUROPEAN COMMISSION, *The Economic Adjustment Programme for Portugal. Fifth review – Summer 2012*, Brussels 2012.

competition framework and regulatory environment have been revamped to foster competition and reduce rents; and, efforts have been made to improve the business environment, including by cutting red tape and raising the efficiency of the judicial system. Reflecting a wide array of legislative changes, indices of EPL restrictiveness, business environment and overall competitiveness are showing encouraging progress". At the same time, the Fund noted that "[f]ull implementation of the wide-ranging structural reforms already adopted under the program is expected to have a positive impact on growth and job creation over the coming years" and that "a strong commitment to expand the process of structural reform into the medium term would be essential in attracting more foreign direct investment to the tradable sectors".[18]

In June 2014, Portugal successfully concluded its economic adjustment program[19]. It is still too soon to assess the impact of the reforms implemented under that program on the Portuguese legal system. It seems, however, clear that as a result thereof gains in efficiency may be achieved by the Portuguese judiciary and that recourse to alternative dispute resolution mechanisms may also be enhanced.

This would, of course, be some of the positive effects of the program. Other aspects, notably those related to the freer termination of lease and employment contracts, may prove less positive in light of their adverse impact on the economic situation of large parts of the population in need of protection, such as lessees and employees. In a country that has reached an unprecedented 16.2 percent rate of unemployment in 2013 (13.9 percent in 2014), such measures may put social cohesion seriously at risk, thus jeopardizing the Government's own efforts aimed at promoting the reforms.

These risks are, of course, not unknown to the international institutions promoting the legal reforms at stake. As the abovementioned IMF 2012 Report states, "it remains unclear whether these reforms will prove adequate to engender the relative price adjustment required to raise competitiveness, employment, and potential growth rapidly enough to avoid adjustment through a drawn-out economic depression".

[18] See INTERNATIONAL MONETARY FUND, *Country Report No. 14/102*, 2014, available at http://www.imf.org/external/pubs/ft/scr/2014/cr14102.pdf.

[19] See EUROPEAN COMMISSION, *The Economic Adjustment Programme for Portugal 2011-2014*, Brussels 2014, stating that: "In the face of challenging circumstances, Programme implementation over the past three years has been successful overall in improving public finances, stabilising the financial sector and bringing the economy back on a path of recovery" (p.3).

A more critical view of the envisaged reforms was expressed by the Portuguese Constitutional Court, which has declared several of them at least partly incompatible with the Constitution.[20]

In any event, it is noteworthy that the success of the envisaged reforms is by no means ensured by the mere adoption of new laws. The cooperation of institutions and individuals, notably of legal professionals, is crucial for that purpose and this can only be achieved if they are motivated, which is not very likely in the case of judges and clerks whose salaries have been dramatically cut back. Unsurprisingly, some of the announced reforms have met with considerable criticism from the persons that have to implement them.[21]

One should equally take into consideration that what may be externally perceived as dysfunctional is often the result of deeply rooted practices which are very difficult, if not impossible, to eradicate failing an effort to persuade and to re-educate lawyers and judges.

Finally, it should be borne in mind that in a country, such as Portugal, with a history of almost 900 years of strong public intervention in the economy, the idea of "rolling back the frontiers of the State" in order to enhance competition, which underlies the current legal reform program, may not produce the expected results within a short time frame.

[20] See, *inter alia,* the Constitutional Court's ruling of 20 September 2013, no. 602/2013 (available at http://www.tribunalconstitucional.pt), which declared some of the rules contained in Law no. 23/2012, that amended the Labour Code, as unconstitutional for breaching the Constitution's provisions on job security and the right to collective bargaining. Law no. 27/2014, of 8 May 2014, subsequently adapted the Labour Code to that ruling. Other Constitutional Court rulings have struck down a number of budgetary measures aimed at cutting back public servants' salaries and pensions, on the basis, notably, of the equality and the reliance principles enshrined in the Constitution. This was the case, e.g., of rulings nos. 353/2012 and 187/2013 (on the suspension of holiday and Christmas subsidies paid to public servants), 474/2013 (on the dismissal of public servants) and 862/2013 (on retirement and other pensions paid to public servants). For an in-depth analysis of this case law, see ALMEIDA RIBEIRO, G., & PEREIRA COUTINHO, L. (eds), *O Tribunal Constitucional e a crise. Ensaios críticos,* Coimbra, 2014.

[21] A sceptical point of view regarding the potentialities of legal reforms in the field of Civil Procedure was expressed, for example, by Justice ABRANTES GERALDES, A., O Memorando de Entendimento e a Reforma do Processo Civil, *Revista da Ordem dos Advogados* (2011), p. 977 *et seq*.

6. Conclusions

What lessons may one draw from the Portuguese case regarding the implementation of legal reforms in the context of the international financial crisis?

It is well-known that legal reforms may be brought about in many ways. Over the past 30 years or so, Portugal, as well as many other European countries, has implemented several important legal reforms that were required by EU Law. This has paved the way for the current legal reforms, which are to a large extent also propelled by international institutions.

In the long run, the reforms at stake may be beneficial to the country, notably by improving the business environment and hence investors' reliance in the legal system.

The success of those reforms nevertheless largely depends upon, among other factors, the ability of the Government and the international institutions monitoring them to adapt their contents and pace to the idiosyncrasies of the particular society for which they are meant.

Time and again, comparison of legal systems has taught us that positive law must conform to the notion of justice prevailing among its addressees, or face ineffectiveness. This is perhaps the greatest challenge to be met by legal reformers in a time of crisis – in Portugal and elsewhere.

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