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An Overview of the Portuguese Electronic Jurisdictional Administrative Procedure

António Mendes Oliveira [1], Ricardo Lopes Dinis Pedro [2], Pedro Miguel Alves Ribeiro Correia [3,*] and Fabrício Castagna Lunardi [4]

[1] Administrative and Fiscal Court of Sintra, 2714-556 Sintra, Portugal; antonio.mendes.oliveira@juizes-cstaf.org.pt
[2] Researcher at the Lisbon Public Law Research Centre, 1649-014 Lisbon, Portugal; ricardopedro@fd.ulisboa.pt
[3] Faculty of Law, University of Coimbra, 3004-528 Coimbra, Portugal
[4] ENFAM—National School for the Training and Improvement of Magistrates, Brasília 70.200-003, Brazil; fabricio.lunardi@tjdft.jus.br
* Correspondence: pcorreia@fd.uc.pt

Abstract: In this paper, we seek to define the Portuguese Electronic Jurisdictional Administrative Procedure and characterize the scope and success of its implementation in terms of access to justice and court efficiency. It encompasses different perspectives on the judicial system and the electronic administrative procedure, reflecting the diversity of its authors, and combines a theoretical approach and discussion with statistics produced with official judicial data. Therefore, it introduces the issue and its background and discusses the models and principles of electronic judicial procedure and its representation in the Portuguese judicial procedure and law. It also presents the Portuguese exceptional and temporary regime for conducting judicial hearings in the context of the COVID-19 pandemic, discussing its merits and presenting the corresponding judicial statistics. The paper concludes that the advent of electronic judicial procedure, driven by technological advancements and aiming to achieve procedural effectiveness and efficiency, represents a paradigm shift and a change in the nature of the legal process, i.e., an ontological transformation in the theory of the process that requires a robust conceptual framework, to ensure consistent interpretation and application of procedural law and to guarantee respect for equality and legal certainty.

Keywords: electronic judicial procedure; Electronic Jurisdictional Administrative Procedure; court efficiency principles of electronic judicial procedure; principle of dematerialization; principle of procedural deterritorialization; principle of connectivity and immediacy; principle of hyper-reality; virtual hearings; exceptional judicial hearings regime in COVID-19

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1. Introduction and Background

Electronic judicial procedure is the virtual or electronic processing of the judicial process, in which the judicial procedure adapts to the new "electronic environment" and the documental procedure becomes fully digital, the hearings can be performed with digital resources, and the notion of an electronic procedural system takes center stage.

It has been gradually implemented worldwide, being widely regarded to increase and maximize the judicial system, in particular in terms of access to justice and court efficiency (World Justice Project 2019; Harley and Said 2018; OCDE 2016, 2018).

Portugal has been at the forefront of this process, with significant results and challenges (Gomes and Fernando 2017; Gomes et al. 2014, pp. 161–83; Garoupa 2011; Gomes 2011). We believe this can be of use to other countries striving to implement full electronic judicial procedures, in particular in administrative courts.

Therefore, a comprehensive overview of the current Portuguese Electronic Administrative Procedure will be presented, and the scope and success of its implementation in terms of access to justice and court efficiency will be characterized.

In this regard, the background of the current implementation of the electronic jurisdictional administrative procedure will be put forward, and the model of the principles of the electronic judicial procedure will be discussed at length, namely the principles of dematerialization, procedural deterritorialization, connectivity, and immediacy, and hyper-reality, explaining its conceptual framework, its legal provision, and some of the challenges that have arisen.

On the other hand, we will present the evolution of the Portuguese Electronic Jurisdictional Administrative Procedure in the context of the COVID-19 pandemic. In this regard, the recent Portuguese exceptional and temporary regime for conducting judicial hearings in the context of the COVID-19 pandemic will be discussed, along with its merits and the corresponding judicial statistics, in terms of court efficiency.

This excursion will lead to the conclusion that the advent of electronic judicial procedure, driven by technological advancements and aiming to achieve procedural effectiveness and efficiency, represents a paradigm shift and a change in the nature of the legal process, i.e., an ontological transformation in the theory of the process that requires a robust conceptual framework, to ensure consistent interpretation and application of procedural law and to guarantee respect for equality and legal certainty.

1.1. Method

In the first part of our study, we will focus on a theoretical approach to the topic of electronic judicial procedure, namely its efficiency and effectiveness and its doctrinal foundations, citing the relevant international literature and reports.

Concurrently, we will present and discuss the specific case of the Portuguese Electronic Jurisdictional Administrative Procedure, citing the relevant national literature, reports, and studies regarding the administrative courts and others.

The second part of our paper, pertaining to the evolution of the Portuguese Electronic Jurisdictional Administrative Procedure in the context of the COVID-19 pandemic, will rely on an empirical standpoint brought forward by the collected statistical data.

This method will allow us to close the gap between the theoretical and empirical part of the study, demonstrating how the aforementioned theory regarding the electronic judicial procedure was put to the test and developed in a critical context, namely that of the COVID-19 pandemic.

1.2. Background

Article 24 (1) of the Portuguese Administrative Courts Procedure Code (CPTA), as amended by Law No. 118/2019 of 17 September, establishes the administrative jurisdictional process as an electronic procedure. It states that:

> "the process in administrative courts is an electronic process, consisting of structured information contained in the respective information system and electronic documents, with written procedural acts being carried out electronically in accordance with the terms defined by an order of the government member responsible for the justice area"

Among other changes introduced by this law, a complete transition to electronic processing of the procedure has been implemented, comprising structured information contained within the respective information system and the electronic documents inserted therein.

In our view, this shift represents more than a mere update of procedural legislation in relation to available information technology; it is a paradigm shift and a change in the nature of the process, leading to an ontological transformation in the theory of the process.

It is worth noting that this change also applies to tax proceedings due to the amendment made by Article 270 of Law No. 114/2017 on 29 December (State Budget Law for 2018) to Article 97(4) of the Tax Procedural Code. This amendment states that:

> "procedural acts, including acts of the parties that must be performed in writing, notifications between representatives, between representatives and representa-

> tives of the Public Treasury, and notifications to representatives of the Public Treasury and the Public Prosecutor's Office, as well as the processing of tax judicial proceedings, are carried out in the terms provided for processes in administrative courts, namely in Articles 24 and 25 of the Code of Procedure in Administrative Courts"

This change occurs almost simultaneously with the recent amendments to the Portuguese Code of Civil Procedure (CPC), enacted by Decree-Law No. 97/2019 of 26 July, which shares the same objective, as stated in the preamble, "to fully reflect in the Code of Civil Procedure the idea of "digital by default": that is, the idea that judicial proceedings, their processing, and, as a rule, the performance of acts have an electronic nature".

The mentioned provisions reveal a distinct legislative intention to effect simultaneous and convergent changes in the procedural paradigm across administrative and tax courts, as well as in civil judicial courts.[1]

Similarly, recent amendments have been introduced to the regulations concerning electronic processing. Notably, Decree No. 380/2017 of 19 December established new regulations for electronic processing of cases in district administrative courts, tax courts, central administrative courts, and the Supreme Administrative Court.[2] Additionally, Decree No. 267/2018 of 20 September amended the regulations for electronic processing of cases in judicial, administrative, and tax courts (Citius/SITAF), and Decree No. 4/2020 of 13 January recently amended Decree No. 380/2017 of 19 December.

Consequently, the changes to the CPTA rules concerning electronic processing and its procedure need to be understood and integrated in conjunction with the entire applicable legal framework, including the regulations governing electronic processing in administrative courts and the new electronic civil procedural regime, considering their subsidiary and integrative role in administrative procedural processing, particularly as per Article 1 of the CPTA.

It is indisputable that the electronic processing of procedures offers substantial advantages to the involved parties, streamlining procedural management and leveraging electronically stored information, thus reducing the time and costs of proceedings (Silveira 2020, pp. 480–81).

Furthermore, the legislator's explicit objective was to pursue procedural effectiveness and efficiency, as clearly stated in the Statement of Reasons of Proposed Law No. 168/XIII/4th (GOV) and in the Preamble of Decree-Law No. 97/2019, dated 26 July, based on similar international experiences (World Justice Project 2019; Harley and Said 2018; OCDE 2016, 2018) and the Portuguese experience itself (Gomes and Fernando 2017; Gomes et al. 2014, pp. 161–83; Garoupa 2011; Gomes 2011).

However, it is undeniable that this measure not only brings about practical and pragmatic consequences concerning the administration of justice but also represents a fundamental change in the nature of the process itself. Previously, the process was composed of documents produced by various participants, which were then digitized and submitted (or directly sent) through an electronic platform while still adhering to the same format as the physical version of the process, which remained the primary framework. Now, it has evolved to a fully electronic process, in which physical existence has become occasional and limited in comparison to its electronic counterpart. In essence, we have transitioned from an analog-based process, relying on digitized physical documents, to an electronic-based process.

Summary: The electronic judicial procedure, understood as the virtual or electronic processing of the judicial process, in which the judicial procedure adapts to the new "electronic environment" and the documental procedure becomes fully digital, the hearings

[1] Since the enactment of Law No. 41/2013, dated 26 June, the electronic procedure has been obligatory in judicial courts, specifically in Articles 132 and 144, which eliminated the preferential nature of electronic processing previously applicable in administrative and fiscal courts until now.

[2] As a result of this amendment, electronic processing will now also be mandatory in the higher courts, except for the exemption outlined in Article 16(3) of the mentioned Decree.

can be performed with digital resources, and the notion of an electronic procedural system takes center stage, has been gradually implemented worldwide, being widely regarded as a means to increase and maximize the judicial system, in particular in terms of access to justice and court efficiency.

In Portugal, it is fully implemented in the various jurisdictional procedures, revealing a distinct legislative intention to effect simultaneous and convergent changes in the procedural paradigm across administrative and tax courts, as well as in civil judicial courts.

2. Models of Electronic Judicial Procedure

For analytical purposes, we propose dividing electronic judicial procedure models into three generations: the first generation, referred to as the "photo-process", the second generation, known as the "e-process", and the third generation, labeled as the "i-process" (Chaves Júnior 2015, p. 2).

We have thus transitioned from:

(i) the first phase or generation of electronic judicial procedure, based on a logic of digitization, where the digital copy loaded onto a communication system had redundant or instrumental importance compared to the physical processing of the process, attempting to replicate its logic.

(ii) in the second phase, based on the logic of virtual or electronic processing of the process, in which the judicial procedure adapts to the new "electronic environment" and the documental procedure becomes fully digital, the hearings can be performed with digital resources, and the notion of an electronic procedural system takes center stage, rather than just digitally accessible pieces (Chaves Júnior 2015, p. 3).

With the (iii) third generation of electronic judicial procedure, the connection of case files to the rest of the system and the Internet (Chaves Júnior 2015, p. 3) will gain prevalence, transforming the dimensions of the device, the cooperation of the parties, and the principle of inquisitorial proceedings.

Additionally, the importance of artificial intelligence in processing cases will inevitably gain relevance, particularly in proposals for dispute resolution and the creation of automated or potentially automatic orders and judgments.

In these terms, *prima facie*, the change or evolution from a logic of digitization and incorporation of procedural documents into the system to a logic of electronic processing or "e-process" may appear to have limited significance—after all, it is only the medium in which the process unfolds that changes.

However, contemporary procedural rules were conceived and developed in an analog context, and their application within the scope of electronic processing requires updating and independent interpretation through the adaptation and development of new norms or by extending the interpretation of existing norms. Failure to do so may result in normative and principled conflicts or violations of essential procedural (and constitutional) principles (Pedro and Oliveira 2019, p. 61).

Therefore, the transformation of the process into an electronic one necessitates the consideration of new inherent principles that are crucial for updating and interpreting procedural rules while also interacting with classical procedural principles.

Hence, we put forth the proposition to advance and analyze some of these new principles of electronic judicial procedure, acknowledging that judicial practice may reveal others that are currently indiscernible or require doctrinal and jurisprudential substantiation.

Summary: In the Portuguese Jurisdictional Administrative Procedure, there has been a transition from an analog-based process, relying on digitized physical documents, related to the first phase or generation of electronic judicial procedure, to an electronic-based process, based on the logic of virtual or electronic processing of the process, in which the judicial procedure adapts to the new "electronic environment" and the documental procedure becomes fully digital, the hearings can be performed with digital resources, and the notion of an electronic procedural system takes center stage, rather than just digitally accessible pieces, related to the second phase or generation of electronic judicial procedure.

However, the transformation of the process into an electronic one necessitates the consideration of new inherent principles that are crucial for updating and interpreting procedural rules while also interacting with classical procedural principles.

3. Principles of Electronic Judicial Procedure

3.1. Principle of Dematerialization

The most prominent principle of electronic processing, indirectly referred to in paragraph 1 of Article 24 of the CPTA, is the principle of dematerialization. This principle establishes that electronic processing is "constituted by structured information in the respective information system and by electronic documents".

This construction emphasizes that the process "becomes both the container of the contents (information) of the material rights in dispute and the actual discussion, debate, communication, transmission, and flow of acts and data" (Chaves Júnior 2015, p. 3). In other words, the information contained in the system gains increased importance compared to the traditional pieces of the parties, as we will further explore the principle of the prevalence of structured information from the system.

Furthermore, the principle of dematerialization serves as an instrument and enhancer of the principles of cooperation, procedural efficiency, and formal adequacy, as provided in Article 7 of the Civil Procedure Code (CPC). The electronic means reinforce the conditions and necessity of emphasizing these principles, contrasting with the traditional paper-based processing logic.

Paragraph 2 of Article 24 of the CPTA embodies the paradigmatic provision of electronic processing and the principle of dematerialization. It establishes the obligation to submit written procedural acts electronically in court, as regulated in Ordinance No. 380/2017, of 19 December, whenever the parties are represented in court according to Article 11 of the CPTA, as stated in paragraph 5 of Article 24, by analogy.

In other words, this obligation applies to lawyers (who are mandatory representatives under Article 40 of the CPC, by reference to paragraph 1 of Article 11 of the CPTA), solicitors, and law graduates or legal support professionals registered as users with the IGFEJ, I.P., according to paragraphs 2 and 3 of Article 4 of Ordinance No. 380/2017, of 19 December, and subject to the same ethical duties as the opposing party.[3] It also applies to the Public Prosecutor's Office ("Ministério Público", MP) when it intervenes as a principal or accessory party, in accordance with Articles 9 and 10 of the Public Prosecution Law.

Moreover, this obligation already existed prior to the present amendment to the Administrative Court Procedure Code (CPTA). This is due to the provisions of paragraph 4 of Article 3 of Decree No. 380/2017 of 19 December, which stated that:

> "the submission of procedural documents, documents, and supporting evidence by magistrates of the Public Prosecutor's Office shall be made by electronic data transmission through a specific module of the computer system supporting the activities of the administrative and tax courts"

Paragraph 2 of Article 24 of the CPTA also provides that the date of the performance of the procedural act is deemed to be the date of its issuance in the computer system (which would result, in any case, from the subsidiary application of paragraph 1 of Article 144 of the Civil Procedure Code).

Furthermore, pursuant to Article 11 of Decree No. 380/2017 of 19 December, the computer system is responsible for ensuring:

[3] This situation creates a curious scenario where the obligations of these representatives vary depending on whether the appointed representative is a lawyer or solicitor. Moreover, there may be, in theory, a potential conflict of duties to be fulfilled in the case of multiple parties represented by lawyers and solicitors. The former are subject to the duties specified in Articles 88 to 113 of Law No. 145/2015, of 9 September, which approves the Statute of the Bar Association. On the other hand, the latter are subject to the duties set forth in Articles 118 to 131 of Law No. 154/2015, of 14 September, which establishes the Statute of the Chamber of Solicitors and Enforcement Agents.

> "(a) The certification of the date and time of issuance; (b) Providing the user with a copy of the procedural document and the accompanying documents, with the certified date and time of delivery; (c) Providing the user with a message in cases where receipt is not possible, informing of the impossibility of delivering the procedural document and documents through the system"

These provisions regarding system obligations and automatic acts to be performed by the system, in this case, both regulatory and legally established (such as automatic case assignment, provided for in paragraph 1 of Article 26, or the automatic rejection of the initial petition provided for in the new paragraph 3 of Article 80, both of the CPTA), are symptomatic manifestations of the paradigmatic change in judicial proceedings caused by electronic case management.

The aforementioned provisions justify a distinct legal and doctrinal framework as they involve atypical acts of an automatic nature performed by a new judicial actor, i.e., the computer system (Pedro and Oliveira 2019, p. 120).

The most paradigmatic example is the electronic and automatic distribution of procedural acts.[4] This practice has been admitted and preferred in the judicial courts since the entry into force of Decree-Law No. 180/96 of 25 September, under Article 209-A of the former Civil Procedure Code (CPC), and in the administrative and tax courts, since the entry into force of Decree-Law No. 325/2003, of 29 December, in accordance with the provisions of subparagraph b) of paragraph 1 of Article 4.

However, it became mandatory for both civil and administrative proceedings, pursuant to Article 1 of the CPTA, since the entry into force of Decree-Law No. 303/2007 of 24 August. This amendment altered the wording of Articles 209-A and 214 of the former CPC (which correspond to Articles 204 and 214 of the current CPC) in this regard.

Currently, and since the entry into force of Decree-Law No. 214-Gof 2 October 2015, the electronic and automatic distribution of procedural acts in administrative proceedings is expressly provided for in paragraph 1 of Article 26 of the CPTA.

In all matters not expressly regulated in that article, the provisions of the CPC regarding distribution apply, with the necessary adaptations, as stated in paragraph 3. In other words, the procedural act of distributing acts, which was previously the responsibility of the court registry, now falls under the responsibility of the computer system, which performs it completely autonomously, i.e., automatically, without the involvement of the court registry. As a result, the subject of the procedural act and the nature of the act have changed. The system now takes on the role of the subject, and the act itself has become automatic, following the rules programmed in the computer system.

Various provisions in the CPTA regarding system obligations and automatic acts to be performed by it, such as paragraph 4 of Article 24, Article 26, paragraph 1 of Article 79, paragraph 3 of Article 80, paragraph 6 of Article 83, and paragraph 6 of Article 94, all of the CPTA, or in paragraph 2 of Article 8, Article 11, Article 13, paragraph 3 of Article 23, and Article 27-A, all of Decree No. 380/2017, of 19 December, are symptomatic manifestations of the paradigmatic change in judicial proceedings brought about by electronic case management. These provisions necessitate a separate legal, jurisprudential, and doctrinal framework, as they constitute atypical acts of an automatic nature performed by a new judicial actor—the computer system—which does not have any procedural framework.

The sole legal provision regarding the prerogatives of the computer system is found in paragraph 1 of Article 137 of the CPC, which allows it to perform any acts, regardless of the nature of the respective case, at any time, including during court closures and judicial vacations, and apparently without any priority (unless the system is programmed or instructed otherwise).

[4] Specifically, this includes cases that involve the initiation of a legal proceeding that does not depend on another case already assigned, or cases that originate from another court, except for rogatory letters, orders, official letters, or telegrams used solely for service of process, notification or posting of notices, as outlined in paragraph 1 of Article 206 of the CPC.

In contrast, acts performed by the court registry must comply with various rules of priority, and they will only be performed during judicial vacations exceptionally—see, for example, the provisions of paragraph 2 of Article 36 of the CPTA:

> "Urgent proceedings and their incidents are processed during vacations, without the need for prior review, even during the appellate stage, and acts of the court registry are performed on the same day, taking precedence over any other acts"

This need becomes even more pressing considering the principle of the alternation of the computer system, embodied in the new paragraph 6 of Article 132 of the CPC. This provision states that:

> "When its nature allows it, acts within the competence of the court clerk can be carried out automatically by the information system supporting the activities of the courts, in accordance with the provisions defined in the regulation provided for in paragraph 2 of Article 132"

This implies that any acts within the competence of the court clerk can be performed automatically by the system.

Indeed, this principle represents a fundamental change in the paradigm of the judicial clerk and their acts, brought about by the advent of fully electronic proceedings. However, it can lead to conflicts or normative and principled contradictions. For example, one party may be notified by the system, benefiting from the absence of temporal limitations for their acts under paragraph 1 of Article 137 of the Civil Procedure Code (CPC), as mentioned above, while the counterparty is notified by the court clerk and subject to such limitations.

It is worth noting, in this regard and as an implementation of this new principle, that the new paragraph 3 of Article 220 of the CPC allows official notifications by the court clerk to be carried out automatically by the information system supporting the activities of the courts.

Furthermore, with a particular focus on administrative litigation, it is essential to highlight the recent amendments made by Decree No. 4/2020 of 13 January to Decree No. 380/2017 of 19 December. Specifically, Article 23 has been revised to include paragraph 3, which now provides that "the information system supporting the activities of the administrative and tax courts ensures that, upon the submission of any procedural document and upon indication by the representative or attorney in notifying litigation, the representative of the counterparty is notified through electronic data transmission".

3.2. Principle of Procedural Deterritorialization

The dematerialization of the process also implies the deterritorialization of the judicial procedure (Chaves Júnior 2015, p. 24) overcoming the barriers of the territorial jurisdiction areas of the administrative circuit courts, as provided for in Decree-Law No. 325/2003 of 29 December.

This is most prominently manifested in the new Article 502 of the Civil Procedure Code (CPC), which stipulates in paragraph 1 the obligation for witnesses residing outside the municipality where the court or chamber is located to be heard through technological equipment that allows real-time visual and audio communication from the court, chamber, municipal or parish installation, or another public building in the area of their residence.

The dematerialization and deterritorialization of the judicial procedure, together with the principle of connectivity, also raise questions about the need for and potential undue favoritism (in violation of the equality of the parties, as provided for in Article 6) regarding the extension of deadlines for national territorial reasons, as set out in subparagraph b) of paragraph 1 and paragraph 2 of Article 245 of the CPC.

With the advent of electronic judicial procedure and immediate access to case files, there is no longer a need to physically visit the court to consult the physical case file, which was the basis for such extensions since the time of Article 180 of the CPC of 1939. Back then, the judge had to schedule the extension before the citation or notification, "taking into account the distance and ease of communication" (Lebre de Freitas and Alexandre

2018, p. 492; Reis 1948, pp. 300–3) within minimum and maximum limits stipulated for different legally provided situations.

It should be noted that the recent amendment to the CPC introduced by Decree-Law No. 97/2019 of 26 July modified Article 163, reflecting the change in the paradigm of electronic judicial procedure. Access to the physical case file in the clerk's office, previously assumed as the primary means for this purpose under the previous paragraph 2 of the said article (while electronic access was considered subsidiary or residual under paragraph 3 of the same article), now becomes residual or subsidiary. The primary means of exercising the right to access information on the procedure is now the electronic examination and consultation of the case file, as provided for in the new paragraph 2 of Article 163 of the CPC.

Furthermore, the One-Stop Single Counter[5] has been established in the administrative and fiscal courts through Decree No. 178/2017, dated 30 May. Pursuant to Article 2 of the said decree, the Single Counter enables obtaining information, requesting and obtaining certificates, submitting physical copies of procedural documents or supporting documents when permissible, and accessing case files in any administrative and fiscal court, irrespective of the court where the proceedings are pending.

This reflects the principles of dematerialization and deterritorialization of electronic judicial procedure, which significantly enhances the principle of process transparency as provided for in Article 163 of the CPC.

In line with the aforementioned, it should also be noted that electronic service of process, or summons, as stipulated in paragraph 4 of Article 24 of the CPTA, as well as electronic service of process on private legal entities, as set forth in paragraph 5 of Article 219 of the CPC (Pedro and Oliveira 2019, pp. 58–61), by virtue of the subsidiary and integrative application of the provisions set out in the new paragraph 6 of Article 246 of the CPC, applicable by virtue of Article 23 of the CPTA, excludes the application of territorial extensions of the defense period, which are inherently based on territorial considerations, as provided for in Article 245 of the CPC.

3.3. Principle of Connectivity and Immediacy

The principle of connectivity and immediacy, resulting from the complete processing of the case in the judicial information and communication system existing in the administrative courts (accessible via the Internet by all parties involved in the case, SITAF), implies that the actors of the case are constantly connected to each other and to the case—similar to modern social and labor relations. This imposes on everyone, especially the parties, considering the principle of party autonomy, a burden of constant and real-time monitoring of the progress of the electronic judicial procedure (Chaves Júnior 2015, p. 24), challenging the existence of certain deadline calculation rules, such as extensions, and the primacy of business days for the completion of procedural deadlines.

Regarding this matter, we must analyze, from a critical perspective, the provision set forth in paragraph 2 of Article 58 of the CPTA. This provision states that the time limits for challenging decisions are calculated "in accordance with Article 279 of the Civil Code, and their expiration shall be postponed to the next business day when the deadlines end during judicial vacations or on days when the courts are closed".

This provision seems problematic, especially considering the new paradigm of integral electronic processing of cases. As mentioned earlier, the principle of connectivity and immediacy resulting from the complete processing of cases through the judicial information and communication system in the administrative courts (accessible through SITAF) requires that all parties involved in the case are constantly connected to each other and to the case at all times.

[5] The aforementioned regime is incorporated in the latest revision of the Civil Procedure Code (CPC) and is expressly presented verbatim in the new paragraph 3 of Article 158 of the CPC, without, however, including any reference to the model or designation of a Single Counter.

Given that the entire case processing, including the performance of all acts by the parties, takes place in a computer system that is permanently available, what sense does it make to transfer the expiration of a deadline—in this case, a statute of limitations—to the next business day when the court is open?

We believe that this rule obviously made sense before the introduction of electronic judicial procedure, but presently, it seems inappropriate, given the current real-time nature of the system and the paradigm of electronic judicial procedure.

Moreover, it appears to be at odds with the principle of electronic administration, as provided in Article 14 of the Portuguese Administrative Proceeding Code (CPA), which prescribes that public authorities and services must use electronic means in their activities to promote administrative efficiency, transparency, and proximity to stakeholders—ultimately, the dematerialization of administrative proceedings.

In this context, Miguel Prata Roque (2014) points out that:

> "This dematerialization contributes to the full implementation of the 'principle of continuity of public services', allowing public administration to act either with continuous public access or outside business hours. The provision of institutional websites and long-distance communication means—email, 24-h telephone lines, or fax—has made that paradigmatic model of 'intermittent administration' implode". (pp. 312–13)

Consequently, the author questions the rule regarding the computation of deadlines set forth in subparagraph f) of Article 87 of the CPA, which stipulates (in very similar terms to this new paragraph 2 of Article 58) that the expiration of a deadline that falls on a day when the relevant office is not open to the public or does not operate during regular hours shall be postponed to the next business day, maintaining the deadline:

> "The introduction of electronic administration mechanisms has brought about a new and original model of continuous and uninterrupted interaction between individuals and public administration. The abandonment of a typical model of face-to-face service—characteristic of the functioning of public offices, with public access limited to specific opening and closing hours—in favor of an electronic or remote service model (. . .) has rendered the traditional rules for calculating and extending administrative deadlines archaic and obsolete.
>
> Given the immediacy of these automated behaviors, it no longer makes sense to suspend the calculation of deadlines on non-business days, i.e., on days when public employees are not at work and, therefore, face-to-face service in public offices is suspended. It also no longer makes sense for individuals to benefit from deadline extensions, even if they are located outside the territorial jurisdiction of the registered office or service of the public legal entity to which they must comply". (Roque 2015, p. 399)

Despite the potential audacity (but undeniable relevance) of the criticism regarding the relationship between individuals and public administration and the implications arising from the principle of electronic administration (whose implementation is not yet complete), it is entirely appropriate to the current judicial model.

Therefore, considering that, as a result of the establishment of integral electronic judicial procedure, the entire process is conducted and exists electronically, and legal representatives—as well as the other parties to the process, as mentioned earlier—must necessarily perform all acts through the electronic system, there is no apparent basis for a rule that transfers the expiration of a substantive or procedural deadline falling on a day when the court is closed to the next business day.

Moreover, this provision should serve only as an escape valve from the electronic process system, i.e., *de jure condendo*, as one of the normative manifestations compensating for the inequality created by the fully electronic judicial process. It allows the parties to perform procedural acts outside the electronic system in case of their own *jus postulandi*, pursuant to Article 40 of the Civil Procedure Code, by analogy, applicable ex vi the para-

graph 1 of Article 11, i.e., when it concerns a case that does not require the appointment of a representative and the party is not represented and does not have access to the platform provided in subparagraph d) of paragraph 5 of the Administrative Procedure Code (Pedro and Oliveira 2019, pp. 61–68).

Furthermore, it should be noted that the addition of paragraph 12 to Article 7 of Law No. 1-A/2020 of 19 March, by Law No. 4-A/2020 of 6 April, shares this purpose, as it exempts from the suspension of procedural and administrative deadlines "those related to acts performed exclusively electronically within the scope of the responsibilities of the National Institute of Industrial Property, IP".

In other words, considering the exclusively electronic nature of the acts to be performed, this measure emphasizes the primacy of the principles of connectivity and immediacy, given the exceptional circumstances caused by the SARS-CoV-2 coronavirus and the COVID-19 pandemic, which, despite their enormous severity and disruption, do not objectively prevent professionals from performing acts exclusively through electronic means.

3.4. Principle of Hyper-Reality

The principle of hyper-reality (Chaves Júnior 2015, p. 17) is yet another fundamental principle of electronic proceedings that pertains to its influence on in-person and oral hearings, particularly those requiring the presence of the court, parties, and other procedural participants for examining disputed factual matters. This impact is demonstrated through the utilization of electronic methods to conduct specific in-person and oral procedural acts, as well as to record and provide access to the proceedings.

Accordingly, this principle is actively implemented by facilitating the performance of in-person and oral acts through electronic communication means and passively by recording and making the conducted proceedings available.

3.4.1. The Practice of In-Person and Oral Acts through Electronic Means

Regarding the practice of in-person and oral acts through electronic means, the principle of hyper-reality modifies and expands the scope of the principle of immediacy.[6] By substituting physical with virtual presence, facilitated by electronic means, the principle of immediacy now encompasses both virtual and electronic immediacy.

In this sense, the principle of hyper-reality complements and reinforces the principle of immediacy, aiding the court and parties in achieving the utmost immediacy and concentration in the evidentiary proceedings whenever possible, appropriate, and necessary. As stated by Pires de Sousa (2020):

> "immediacy can be understood in a broad sense and a narrow sense. In the broad sense, immediacy requires judicial presence in the acts that unfold during the process. In the narrow sense, which is the most common and can also be referred to as subjectively oriented immediacy, immediacy requires the judge to be present during procedural acts related to the production of evidence, with the purpose of placing the judge in the best conditions to understand the subject matter of the case and assess the evidence" (p. 7)

It is essential to highlight that most in-person acts that typically require a final hearing, according to Article 91(1) of the Administrative Procedure Code (CPTA), can already be conducted remotely and electronically. For example, the testimony and statements of parties residing outside the district or the respective island in the case of the Autonomous Regions,

[6] See Judgment of the Administrative and Tax Court of Appeals (TCAS) dated 14 February 2019, Case No. 159/08.9BECTB: "The principle of immediacy translates into personal contact between the judge and the various sources of evidence. In other words, the principle of immediacy tells us that there must be a relationship of direct, personal contact between the judge and the individuals whose statements will be evaluated, as well as with the objects and documents that will serve to support the decision on matters of fact. This allows the judge to become aware of all the relevant facts for the resolution of the dispute and to assess the evidence without, at least to the extent possible, the distortions and errors that can arise from the transmission of knowledge".

following Article 456(2) and Article 466(2) of the Civil Procedure Code (CPC), respectively. Similarly, the examination of witnesses, in accordance with Article 502 and Article 507(2) of the CPC, and the provision of verbal explanations by experts from establishments, laboratories, or official services, typically heard via teleconference from their workplace as per Article 486(2) of the CPC, can also be carried out electronically.

Furthermore, we believe that, in addition to these possibilities expressly provided for in the procedural law for evidence production, it is now feasible to conduct inquiries and hearings where all potential participants (judge, court officials, legal representatives, parties, witnesses, and experts) can participate virtually, mediated through electronic means, provided all parties agree and coordinate, invoking the principles of electronic process, particularly dematerialization, and hyper-reality, along with the principles of cooperation, procedural efficiency, and formal adequacy.

Moreover, it is essential to note that the legislator developed exceptional and temporary measures in response to the epidemiological situation caused by the SARS-CoV-2 coronavirus and COVID-19 disease in the field of justice, with the aim of exploring this potential or addressing challenges presented by virtual proceedings, as we will further describe ahead.

3.4.2. Recording and Availability of Conducted Judicial Proceedings

The passive manifestation of the principle of hyper-reality emerges from the coordinated changes made to the CPTA and the CPC, notably Article 155(2) of the CPC, which now mandates the recording of hearings in a video or audio format (in contrast to the previous requirement of audio recording only).

This new provision allows for a comprehensive reproduction of both sound and visual data from the trial hearings, facilitating a virtual and detailed reconstruction of the hearing, especially witness examination. This, in turn, has a direct impact on the evaluation of evidence produced at the first instance and the potential modification of the factual decision pursuant to Article 662 of the CPC. Consequently, this strengthens the protective and supervisory function of administrative procedural recourse institutes.

An additional noteworthy amendment is found in Article 92(2) of the CPTA, introduced by Law No. 118/2019, dated 17 September. This amendment establishes simultaneous review by associate judges, each of whom gains access to the electronic case file once the case is submitted to the rapporteur in higher courts.

Therefore, this seemingly minor alteration gains significant importance as it effectively combines two fundamental principles of electronic process: (i) the principle of dematerialization—which allows associate judges to have access to the entire case file, and (ii) the principle of hyper-reality, arising from the coordination of changes to the CPTA and the CPC, specifically Article 155(2) of the CPC, which now mandates video or audio recording of hearings (as opposed to audio recording only in the past).

By virtue of this provision, it becomes possible to fully reproduce all sound and visual data from trial hearings, enabling a virtual and comprehensive reconstruction of the proceedings, particularly witness testimonies. This, in turn, significantly impacts the assessment of evidence produced at the first instance and the potential modification of the factual decision pursuant to Article 662 of the CPC. This reinforcement of the protective and supervisory function of administrative procedural recourse institutes, paraphrasing the legislator of Decree-Law No. 329-A/95 of 12 December, takes yet another step towards transforming central administrative courts into a true second instance for the reassessment of factual matters decided at the first instance (Geraldes 2018, p. 284).

As we examine the normative evolution of the objectives envisioned by the procedural legislator for second-instance courts, aiming to ensure a second level of jurisdiction for the adjudication of factual matters, we find that it was grounded in the oral recording of testimonies given during trial hearings, "aiming to mitigate the negative effects of pure orality" (Geraldes 2018, p. 285).

This objective was significantly enhanced with the entry into force of the current CPC through Law No. 41/2013 of 26 June and its Article 155, which now mandates the recording of all final hearings in actions, incidents, and precautionary procedures, therefore granting second-instance courts the possibility to access all means of evidence that were produced, "practically guaranteed in all circumstances" (Geraldes 2018, p. 285).

This is undeniably positive, both reassessing evidence in the context of ordinary or extraordinary appeals and maximizing the principles of publicity and access to the proceedings, as provided in Articles 163 to 171 of the CPC (Almeida Filho 2011, p. 38). The new paragraph 2 of Article 155 of the CPC, which establishes a preference for video recording of the hearing, marks a new and significant leap in the aforementioned normative evolution aimed at ensuring a second level of jurisdiction for the adjudication of factual matters.

This, in turn, allows appellate judges to overcome the limitations of mere oral recording of the hearing by reproducing the audiovisual record, therefore providing the second-instance judge with a much more accurate understanding of what transpired during the hearing (Almeida Filho 2011, p. 37). However, it is important to acknowledge that the audiovisual recording of the hearing, despite its undeniable qualitative advancement and electronic access, always falls short of direct and in-loco perception during its production:

> "There are behavioral aspects or reactions of the witnesses that can only be perceived, apprehended, internalized, and evaluated by those who witness them and that can never be recorded or registered for use by another court that will reassess how the conviction of the judged was formed in the first instance". (Geraldes 2018, p. 299)

Nevertheless, given the duty incumbent upon the appellate court to "modify the factual decision if and when it can derive from the means of evidence (. . .) a different result that is rationally supported" (Geraldes 2018, p. 299), and particularly the expanded powers enjoyed by appellate courts in administrative judicial procedures in this matter (Aroso de Almeida and Cadilha 2017, pp. 1130–33), along with the current technological means, electronic access to audiovisual recordings of the final hearing and the entire electronic case file will enable associate judges to exercise their functions in a more substantiated manner, enhancing collegiality and the rigorous exercise of reassessing evidence produced at the first instance. This is crucial for our configuration of the second instance as a key element in the effective judicial protection of the parties.

Finally, note that this new regime also applies to the trial in an extended panel of the administrative circuit court, as provided for in subparagraph a) of paragraph 1 of Article 93 of the CPTA (now also contemplated in Article 122-A of the CPPT).

3.5. Principle of the Prevalence of Structured Information in the System

Finally, with the establishment and standardization of electronic judicial procedure, we witness the advent of the principle of the prevalence of structured information in the system, as present in various provisions of the CPTA 2019. This principle arises from an operational need of the system, aiming to ensure that the system operates as expediently and automatically as possible. To achieve this goal, it becomes imperative to guarantee the stability and reliability of the data it operates with, imposing a special duty of care on all human operators, but mainly on the parties, regarding the data entered into the system.

As a result, these data take precedence over the information contained in the documents submitted by the parties, meaning that they prevail, to a certain extent and with limits, over the subject matter or substance of the dispute brought by the parties under the principle of procedural disposition. The mentioned principle even goes as far as to require the introduction of data without relevance or direct connection to the said substance of the case, but which "feeds" the computer system, making it operational.

For example, Article 5 of Decree No. 380/2017 of 19 December establishes that "the submission of procedural documents electronically is carried out through the completion of forms made available in the computer system supporting the activity of administrative and fiscal courts". In conjunction with the mandatory elements to be included in the initial

petition, listed in paragraph 2 of Article 78 of the CPTA, these constitute a duplication of these elements. Failure to comply with this requirement results in the rejection of the submission by the system, as provided for in paragraph 3 of Article 80 of the CPTA.

This principle is enshrined in paragraph 3 of Article 24 of the CPTA, which establishes a procedural requirement arising from the electronic nature of the process and the imperative need for the correct input of operational data into the electronic system. These data give the process its own identity and contain the main identifiers of the process, enabling the system to automatically perform the corresponding operations or procedural acts that trigger the establishment of the electronic process: (i) the verification of the facts that lead to the rejection of the initial petition, as provided in the new paragraph 3 of Article 80 of the CPTA; (ii) the distribution and assignment of the process, as stipulated in paragraph 1 of Article 24 and Article 13 of the Ordinance No. 380/2017, of 19 December.

Thus, it is incumbent upon the parties to provide the correct information in the information systems' forms, allowing the necessary automation and transmission of information to operate without the court registry and the judge having to confirm ex officio whether this information corresponds to the documents attached to the process, establishing an operational principle of the electronic judicial procedure, namely the prevalence of the structured information introduced by the party over the content of its submissions and requests.

In contrast, the possibility of remedying formal deficiencies of the parties' acts is safeguarded in accordance with Article 146(2) of the CPC, provided that the correction does not involve significant prejudice to the regular progress of the case. Regarding this,

> "it is important to note that (...) paragraph 2 of Article 146 does not allow overcoming the effect of non-compliance with any duty imposed on the parties, aiming only to allow the correction of merely formal aspects of an act that has been timely performed. In this sense, it will be possible to correct a probative request regarding the name or address of a witness but not to compose the request in terms of asking the listed witnesses to be notified". (Geraldes et al. 2018, pp. 175–76)

It should be noted that this possibility is not expressly provided for in the new wording of Article 144 of the CPC, as amended by Decree-Law No. 97/2019 of 26 July, particularly in paragraph 10(b). This establishes the same principle of the prevalence of system information, with a broader (more concrete) scope, stating that structured system information prevails even if the respective fields or forms are not filled out, i.e., when the parties have forgotten to mention a certain element in the submission form that appears in their submissions.

This provision in paragraph 10(b) of Article 144 of the CPC demonstrates a prevalence of the efficiency of the computer system over the principle of cooperation provided for in Article 7 of the CPC. However, it cannot be considered in isolation and must take into account the escape valve provided for in paragraph 2 of Article 146 of the CPC, which allows the judge, upon request of the party, to admit the remedy or correction of purely formal defects or omissions in acts performed, provided that the omission cannot be attributed to fraud or gross negligence, and the remedy or correction does not involve significant prejudice to the regular progress of the case.

However, pursuant to paragraph 3 of Article 6 of Ordinance No. 380/2017 of 19 December, it is expressly provided that the inconsistency between the content of the forms and the content of the attached files, although it can only be requested by the party, can still be raised ex officio by the judge.

Therefore, this regulatory provision seems entirely consistent with the legislative rationale underlying the principle of cooperation and the judge's duty of procedural management, as provided for in Articles 7 and 8 of the CPC, and it represents a flexible, "human" and appropriate solution to the new paradigm of the electronic judicial procedure, given the necessary and understandable efficiency of the computer system in which it needs to operate.

The manifestations of this principle are scattered throughout the CPTA (and the CPC) in various provisions, particularly in Articles 78 to 83 and in paragraph 3 of Article 99, which serves as a precursor example of the principle of the prevalence of structured system information.

Summary: We can identify five main Principles of Electronic Judicial Procedure in the Portuguese procedural statutes.

The most prominent principle of electronic processing is the principle of dematerialization, which establishes that electronic processing is "constituted by structured information in the respective information system and by electronic documents", or, in other words, that the information contained in the system gains increased importance compared to the traditional pieces of the parties.

The dematerialization of the process also implies the deterritorialization of the judicial procedure, overcoming the barriers of the territorial jurisdiction areas of the administrative circuit courts, i.e., the Principle of Procedural Deterritorialization, enabling courts to perform hearings and actions outside its territorial jurisdiction.

The principle of connectivity and immediacy, resulting from the complete processing of the case in the judicial information and communication system existing in the administrative courts (accessible via the Internet by all parties involved in the case, SITAF), implies that the actors of the case are constantly connected to each other and to the case—similar to modern social and labor relations.

The principle of hyper-reality is yet another fundamental principle of electronic proceedings that pertains to its influence on in-person and oral hearings, particularly those requiring the presence of the court, parties, and other procedural participants for examining disputed factual matters. This impact is demonstrated through the utilization of electronic methods to conduct specific in-person and oral procedural acts, as well as to record and provide access to the proceedings.

Accordingly, this principle is actively implemented by facilitating the performance of in-person and oral acts through electronic communication means and passively by recording and making the conducted proceedings available.

Finally, with the establishment and standardization of electronic judicial procedure, we witness the advent of the principle of the prevalence of structured information in the system. This principle arises from an operational need of the system, aiming to ensure that the system operates as expediently and automatically as possible. To achieve this goal, it becomes imperative to guarantee the stability and reliability of the data it operates with, imposing a special duty of care on all human operators, but mainly on the parties, regarding the data entered into the system.

4. The Portuguese Exceptional and Temporary Regime for Conducting Judicial Hearings in the Context of the COVID-19 Pandemic

4.1. General

Considering the epidemiological situation caused by the SARS-CoV-2 coronavirus and the COVID-19 disease, several exceptional and temporary measures were implemented in response to the pandemic.

Among these measures was the suspension of judicial proceedings in courts, with a preference for conducting both in-person and remote acts through computer platforms that allowed their electronic or remote execution, including teleconferencing, video calls, or other equivalent means to safeguard the protection and health of the various parties involved in the proceedings, without impeding the practice of in-person acts through electronic and telematics means. These measures ensured that the state of emergency and near paralysis of the country's activities did not hinder the effective judicial protection of the parties' rights.

This part of our paper will rely on an empirical standpoint, brought forward by the collected statistical data, which allowed us to close the gap between the theoretical and empirical part of the study, demonstrating how the aforementioned theory regarding the

electronic judicial procedure was put to the test, and developed, in a critical context, namely of the COVID-19 pandemic.

During the initial phase, the combined provisions of paragraphs 8 and 9 of Article 7 of Law No. 1-A/2020 of 19 March established that in urgent acts and proceedings involving fundamental rights, including personal rights, freedoms, and guarantees, as provided in paragraph 5 of Article 20 of the Portuguese Constitution, "whenever technically feasible, the practice of any procedural acts and procedures through appropriate means of remote communication, including teleconferencing or video calls, is allowed".

This measure, which, as we have seen above, was already procedurally admissible in our view, was also familiar and applicable in administrative litigation. It particularly applied in cases of special urgency in proceedings for the protection of rights, freedoms, and guarantees or for the provisional granting of injunctive relief, pursuant to subparagraph b) of paragraph 3 of Article 110 and paragraph 3 of Article 131, respectively, both CPTA.

Subsequently, through Law No. 4-A/2020 of 6 April, the legislator significantly expanded the possibility (and, we would say, the incentive) to use electronic processes. There was a special focus on the principle of hyper-reality by amending paragraphs 5 and 7 of Article 7 of Law No. 1-A/2020 of 19 March and the temporary rules applicable to urgent and non-urgent proceedings.

Regarding non-urgent proceedings, subparagraph a) of paragraph 5 of the aforementioned Article 7 now provides that the suspension of all deadlines for the performance of procedural acts in these proceedings, as established in paragraph 1 of the same article, does not prevent "the processing of the proceedings and the performance of non-urgent in-person and remote acts when all parties consider that they have the conditions to ensure their performance through computer platforms that allow their electronic execution or through appropriate means of remote communication, including teleconferencing, video calls, or other equivalent means".

The truly innovative—or daring—measure regarding electronic processes and the principle of dematerialization is set forth in the new subparagraph a) of paragraph 7 of Article 7 of Law No. 1-A/2020, of 19 March. It establishes, during that exceptional period, for all urgent proceedings (not only those involving fundamental rights), the rule of dematerialization and hyper-reality of all procedural acts in proceedings that require the physical presence of the parties:

7—Urgent proceedings shall continue to be processed without suspension or interruption of deadlines, acts, or proceedings, subject to the following:

> "(a) In proceedings that require the physical presence of the parties, their representatives, or other parties involved, any procedural acts shall be carried out through appropriate means of remote communication, including teleconferencing, video calls, or other equivalent means."

The rationale behind the measure was understandable, as it aims to prevent unnecessary judiciary suspension, which could potentially result in immediate and irreversible harm to urgent proceedings that, due to their nature, require urgent judicial protection, as provided in paragraph 4 of Article 20 of the Portuguese Constitution. This is also a constitutional imperative in administrative litigation, as stated in paragraph 4 of Article 268 of the Portuguese Constitution.

The procedural adequacy of the measure is equally understandable, considering that the evidence to be produced in such procedures is of a summary and indicative nature, as provided in subparagraph g) of paragraph 3 of Article 114, paragraph 2 of Article 118, and paragraph 1 of Article 120, all of the CPTA, as well as paragraph 1 of Article 365 and paragraph 1 of Article 368 of the CPC. This naturally implies widespread acceptance by various judicial operators, who are less inclined, given the provisional nature of the measure, to be concerned about the transformation and adaptation of the principle of immediacy and orality of judicial hearings through electronic means of communication and hyper-reality (although, as we have seen above, there is already a broad provision in the existing procedural laws regarding evidentiary proceedings).

However, it should be noted that this measure, even if limited to urgent proceedings, represented a shift from the current paradigm of physical in-person hearings to a new (temporary) paradigm of dematerialized and electronic in-person hearings of a "private" nature, as we will see below. Therefore, the temporary rule established that the various parties continued to be present, but no longer in the same physical space, but rather in a dematerialized digital space, where participation in the hearing took place through available electronic and telematics means, as well as the production of evidence, which, as mentioned above, could already largely unfold in a virtual or electronic context.

Although it is still early to assess the impact of this measure, it represents the ultimate embodiment of the principle of dematerialization. We believe it will serve as a future reference for the full electronic processing of proceedings and the use of electronic communication technologies in judicial proceedings (Gelder et al. 2020).

However, the legislator chose to repeal this regime under Law No. 16/2020, of 29 May, which annulled Article 7 of Law No. 1-A/2020 of 19 March and added Article 6-A. According to this new provision, particularly under paragraph 2, final hearings, as well as other proceedings involving witness examination, can now take place in two ways:

1—In person, i.e., at the court, observing the maximum limit of people and other safety, hygiene, and health rules defined by the Directorate General of Health (DGS). All persons present are required to use masks and face shields, as stated in Article 13-B of Decree-Law No. 10-A/2020 of 13 March (cf. subparagraph a) of paragraph 2 of Article 6-A).

2—Through appropriate means of remote communication, including teleconferencing, video calls, or other equivalent means, when it is not possible to conduct them in person due to the impossibility of complying with applicable legal provisions and/or DGS sanitary safety rules. However, in this case, if it is possible and appropriate, particularly if it does not hinder the administration of justice, the testimony of witnesses or parties should still be given in court unless the parties agree otherwise or when the witness or party exercises their right not to attend, as provided in paragraph 4 of Article 6-A (cf. subparagraph a) of paragraph 2 of Article 6-A).

Although the regime for the final hearing was repealed, it was still maintained for the preliminary hearing, as provided in paragraph 3 of Article 6-A of Law No. 1-A/2020, of 19 March, as amended by Law No. 16/2020, of 29 May.

However, this new regime only remained in effect until 2 February 2021, with the entry into force of Article 6-B, added to Law No. 1-A/2020, of 19 March, by Law No. 4-B/2021, of 1 February. This allowed for the conduct of hearings through appropriate means of remote communication, including teleconferencing, video calls, or other equivalent means, but only from a court or public building facilities (cf. paragraph 9), under two differentiated regimes depending on the nature of the proceeding:

1—In non-urgent proceedings, when all parties accepted it and expressly declared to have the conditions to ensure its conduct through computer platforms that enable its realization (cf. subparagraph c) of paragraph 5).

2—In urgent proceedings, if it did not hinder the administration of justice.

Finally, with the introduction of Article 6-E to Law No. 1-A/2020, of 19 March, by Law No. 13-B/2021, of 5 April, a new possibility for the holding of remote trial hearings emerged. This provision, still in force, allows trial hearings to be conducted through appropriate means of remote communication, including teleconferencing, video calls, or other equivalent means, without the limitation of having the parties present in a court or public building. This option is viable when holding the hearing in person is not possible, and video conferencing does not compromise the judicial assessment and evaluation of the evidence to be produced (cf. subparagraph b) of paragraph 2). Additionally, the preliminary hearing and other proceedings that do not involve the production of evidence through the aforementioned means of communication are preferentially held in person (cf. subparagraph a) of paragraph 4).

It is worth noting, as stated by Pires de Sousa (2021), that:

> "under the pre-pandemic legal framework, only public videoconferencing was provided for, meaning that the witness or party had to appear in court or a public body, testifying from there and being previously identified by a public official (Article 502, paragraphs 1, 2, and 4, of the Code of Civil Procedure). In case of difficulty or impossibility of physical attendance in court, with the parties' agreement, questioning could take place by telephone 'or another means of direct communication between the court and the witness', without waiving the public nature of the examination, as the testimony was accompanied in person by a court official (Article 520, paragraphs 1 and 2)". (pp. 13–32)

The successive regulations issued in the context of the pandemic have introduced greater flexibility in the terms under which public videoconferencing can occur and, above all, have introduced private videoconferencing. In this modality, the witness or party gives testimony/statements from a private space without the presence or control of a court official.

Therefore, we can summarize the different regimes for conducting virtual hearings, including the establishment of private videoconferencing as follows:

i. Regime in force between 9 March-6 April 2020 (paragraphs 8 and 9 of Article 7 of Law No. 1-A/2020, of 19 March)—all cases[7] (private videoconferencing);

ii. Regime in force between 7 April-2 June 2020 (subparagraph a) of paragraph 5 of Article 7 of Law No. 1-A/2020, of 19 March, as amended by Law No. 4-A/2020, of 6 April)—all urgent cases and non-urgent cases with the parties' agreement (private videoconferencing);

iii. Regime in force between 3 June 2020-1 February 2021 (subparagraph b) of paragraph 2 and subparagraph a) of paragraph 3 of Article 6-A of Law No. 1-A/2020, of 19 March, as amended by Law No. 16/2020, of 29 May)—trial hearing (public videoconferencing), unless agreed otherwise by the parties (private videoconferencing)—subparagraph b) of paragraph 2; preliminary hearing and others (private videoconferencing)—subparagraph a) of paragraph 3;

iv. Regime in force between 2 February-5 April 2021 (subparagraph c) of paragraph 5 and subparagraph a) of paragraph 7 and paragraph 9 of Article 6-B of Law No. 1-A/2020, of 19 March, as amended by Law No. 4-B/2021, of 1 February)—all urgent cases and non-urgent cases with the parties' agreement (public videoconferencing);

v. Regime in force since 6 March 2021 (subparagraph b) of paragraph 2 and subparagraph b) of paragraph 4 and paragraph 9 of Article 6-E of Law No. 1-A/2020, of 19 March, as amended by Law No. 13-B/2021, of 5 April)—trial hearing, when it is not possible to hold it in person, and video conferencing does not compromise the judicial assessment and evaluation of the evidence to be produced (private videoconferencing)—subparagraph b) of paragraph 2; preliminary hearing and others (private videoconferencing)—subparagraph a) of paragraph 4.

Furthermore, currently, under paragraph 5 of Article 6-E of Law No. 1-A/2020 of 19 March, it is provided that parties, their representatives, or other procedural participants who are proven to be over 70 years old, immunocompromised, or suffering from a chronic illness that, according to the health authority's guidelines, should be considered at risk, are not obligated to travel to a court.

In the event of the exercise of the right not to travel, their examination or participation in the proceeding shall take place through appropriate means of remote communication, including teleconferencing, video calls, or other equivalent means, from their legal or professional residence, i.e., through private videoconferencing.

It is also important to highlight, as a measure to ensure effective access to justice and the principle of equality, the addition of paragraph 4 to Article 14 of Decree-Law No. 10-A/2020, of 13 March, by Article 4 of Law No. 16/2020, of 29 May, in force since 3 June 2020, which establishes an exceptional and temporary regime of electronic impediment (Antunes 2020, pp. 294–332).

[7] Except for urgent procedures pertaining to human rights.

This new electronic impediment aimed to protect any procedural participant (including legal representatives) in isolation due to exposure to COVID-19 who:

(1) did not have access to the necessary and adequate means of communication, especially a computer—considering the case of a representative in isolation at their residence without access to their professional computer, the only one with the appropriate configuration to access the electronic processing system; or

(2) even if they had access to the necessary and adequate means of communication, they suffered from symptoms associated with COVID-19 that prevented or limited their ability to fully and effectively perform the procedural act—considering the case of a representative in isolation due to COVID-19 infection, with access to the electronic processing system, but experiencing symptoms normally associated with COVID-19, such as fever, shortness of breath, and headache, without the conditions to properly and fully exercise their mandate or carry out procedural acts, therefore compromising the adequate legal representation of the party they represent and impeding their effective access to justice.

This electronic impediment was in effect until 30 September 2021 and was revoked by Article 9 of Decree-Law No. 78-A/2021 of 29 September.

4.2. Assessment of the Exceptional Regime

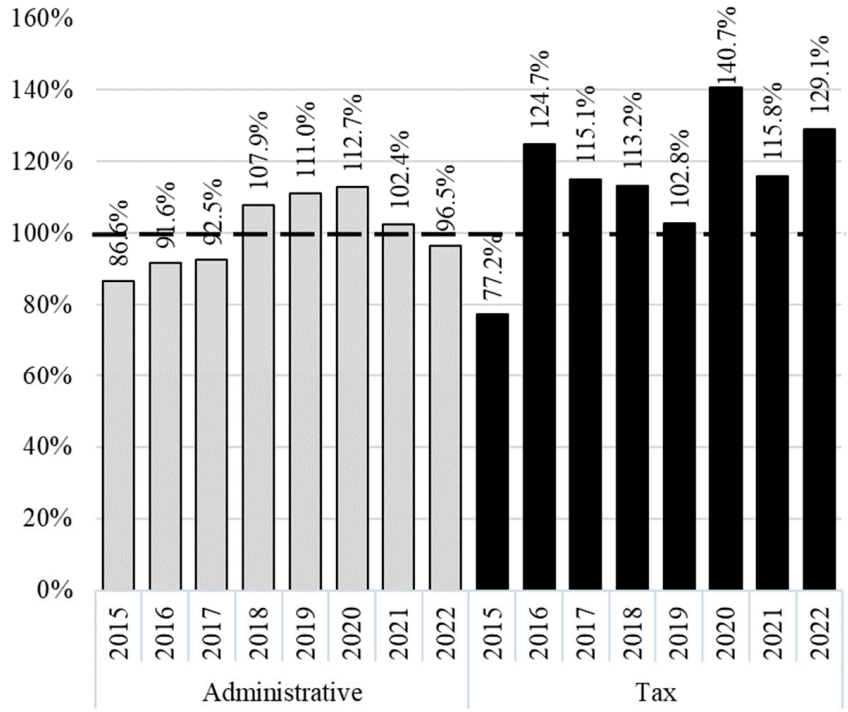
The exceptional and temporary Portuguese regime for conducting judicial hearings in the context of the COVID-19 pandemic, as briefly explained, allowed for the safeguarding of the health and safety of procedural participants during a critical period. Hearings were indeed conducted through remote means of communication, avoiding physical gatherings and the inherent and obvious risks of viral transmission.

Furthermore, the productivity and efficiency of administrative and tax courts, as well as judicial courts, were maintained and, in some cases, increased during the pandemic, and the validity of the aforementioned procedural regimes, with their respective rates of case resolution exceeding 100% (DGPJ 2023). Figures 1–4 illustrate this evolution.

Moreover, the possibility of access to "private videoconferencing" and the recognition of the "justifiable technological impediment", mentioned above, ensured adequate and fair access to effective judicial protection for all while respecting the principle of equality. It allowed for universal access to effective judicial protection from one's residence, guaranteeing the regular and proper functioning of the justice system during such a critical time. It also safeguarded the disparity in technological resources available to the parties and the dignity of the individuals involved by allowing for postponements in case of illness or lack of personal technological means.

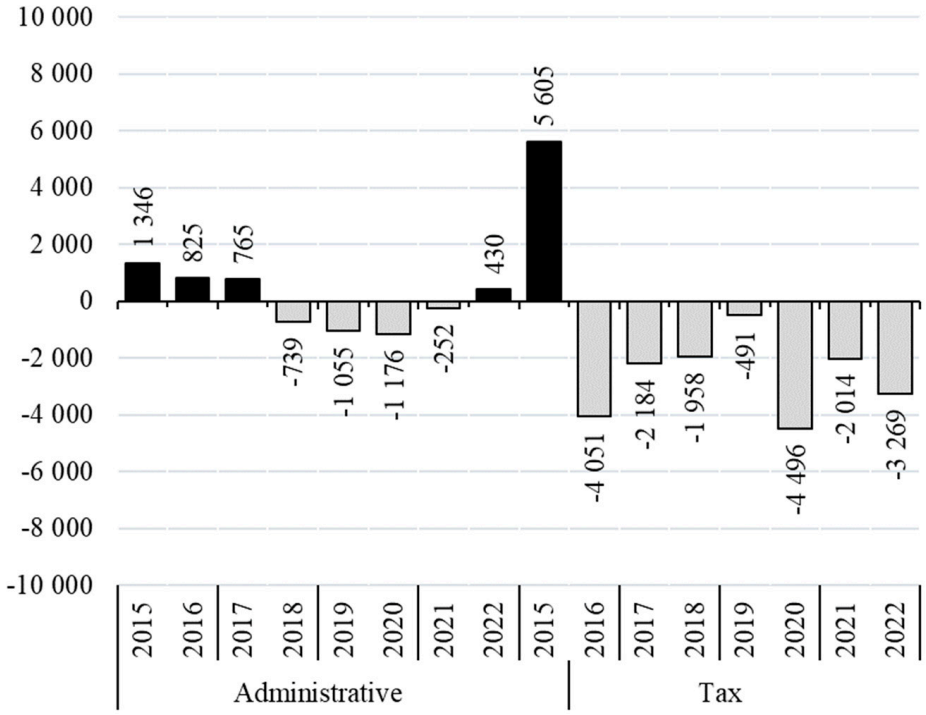
On the other hand, it was concluded that the conduct of final hearings through electronic and remote means did not compromise the evaluation of the evidence presented nor undermine the principle of immediacy. In fact, we believe that conducting hearings through telematics means served as a guarantee of the principle of immediacy, especially in the examination of witnesses during a pandemic and in compliance with the rules imposed by health authorities for wearing the required masks and face shields would have disrupted the production of evidence and the strict observance of the principle of immediacy.

This principle implies that, in addition to the parties, the judge may ask the witnesses any questions deemed necessary to fully clarify the facts and observe the witness's reactions, particularly non-verbal behavior. Reading and assessing such non-verbal cues in person plays a fundamental role in determining the sincerity and truthfulness of the testimony and, consequently, the proper formation of the judge's conviction.



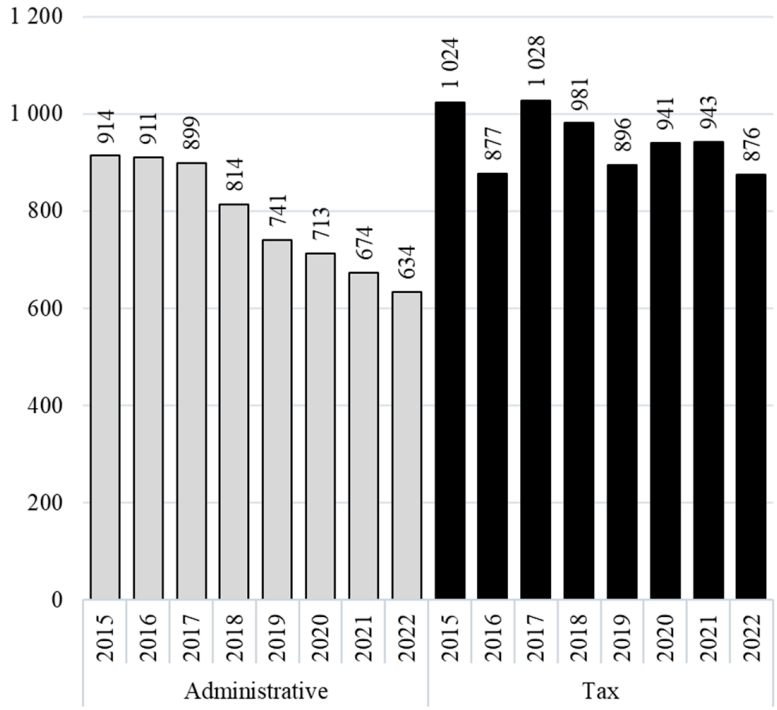
Data source: Directorate General for Justice Policy.

Figure 1. Clearance rate in first-instance courts, by subject, 2015–2022.



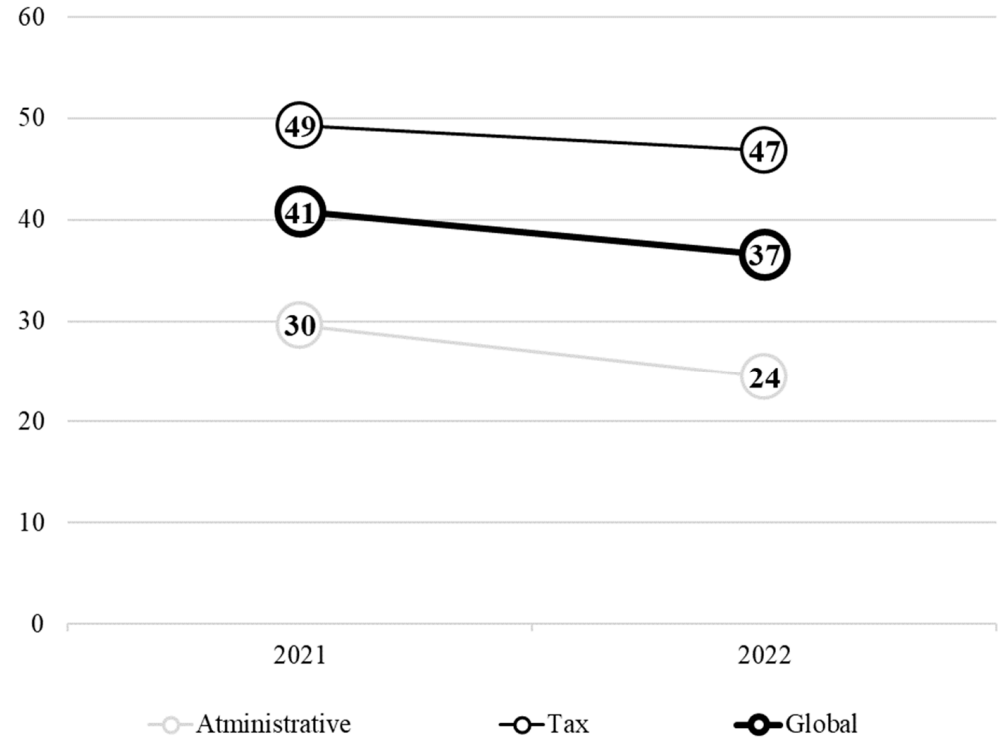
Data source: Directorate General for Justice Policy.

Figure 2. Procedural balance in first-instance courts, by subject, 2015–2022.



Data source: Directorate General for Justice Policy.

Figure 3. Disposition time (in days) in first-instance courts, by subject, 2015–2022.



Data source: Directorate General for Justice Policy.

Figure 4. Average duration (in months) of completed cases in first-instance courts, by subject, 2021–2022.

However, it is worth noting that this assumption is far from accurate. As Pires de Sousa (2020) emphasizes:

> "there are few scientifically validated non-verbal indicators of lies, and those that exist have a weak relationship with detection. Moreover, judges do not have the specific training and capacity to explore the detection of such lie indicators effectively and securely. Even when they receive specific training, the improvement is not significant. Thus, the direct and physical interaction between the judge and the witness cannot be attributed with qualities that forensic psychology does not recognize. The formation of conviction regarding the reliability of the testimony is primarily based on the verbal channel of communication, with the non-verbal channel playing a residual and unreliable role". (pp. 7–8)

Therefore, the physical presence of the witness before the judge is not as essential as previously assumed for the evaluation of such evidence. The effective parameters for assessing the witness are not significantly affected if the witness examination is conducted remotely. This conclusion is of significant importance and should lead the legislator and judicial practice to be increasingly receptive to the remote examination of witnesses. Thus, the flexibility introduced by Article 6-A may, in our belief and hope, evolve towards future normalization, no longer having an exceptional and temporary character.

Moreover, as Gonçalves (2020) points out:

> "It should not be argued, on the other hand, that the generalization of conducting final hearings or inquiries involving witness examination in person aims to ensure compliance with the principle of immediacy and/or safeguard the judge's formation of conviction regarding the value of the evidence presented. It should not be ignored that the production of testimony by someone whose face is partially obscured for public health reasons still presents an obstacle for the judge to capture the facial expressions of the deponent, which is particularly relevant when evaluating evidence and providing reasons for the judicial decision.
>
> Hence, this limitation, combined with the challenges of adapting physical spaces in courts to comply with the restrictions imposed by health authorities, could be easily overcome if the final hearing and/or witness examination were generally conducted remotely". (p. 15)

Summary: Considering the epidemiological situation caused by the SARS-CoV-2 coronavirus and the COVID-19 disease, several exceptional and temporary measures were implemented in response to the pandemic.

Among these measures was the suspension of judicial proceedings in courts, with a preference for conducting both in-person and remote acts through computer platforms that allowed their electronic or remote execution, including teleconferencing, video calls, or other equivalent means to safeguard the protection and health of the various parties involved in the proceedings, without impeding the practice of in-person acts through electronic and telematics means. These measures ensured that the state of emergency and near paralysis of the country's activities did not hinder the effective judicial protection of the parties' rights.

The exceptional and temporary Portuguese regime for conducting judicial hearings in the context of the COVID-19 pandemic allowed for the safeguarding of the health and safety of procedural participants during a critical period. Hearings were indeed conducted through remote means of communication, avoiding physical gatherings and the inherent and obvious risks of viral transmission.

Furthermore, the productivity and efficiency of administrative and tax courts, as well as judicial courts, were maintained and, in some cases, increased during the pandemic, and the validity of the aforementioned procedural regimes, with their respective rates of case resolution exceeding 100%, as we demonstrate with the statistical data.

Moreover, the possibility of access to "private videoconferencing" and the recognition of the "justifiable technological impediment", mentioned above, ensured adequate and fair access to effective judicial protection for all while respecting the principle of equality. It allowed for universal access to effective judicial protection from one's residence, guarantee-

ing the regular and proper functioning of the justice system during such a critical time. It also safeguarded the disparity in technological resources available to the parties and the dignity of the individuals involved by allowing for postponements in case of illness or lack of personal technological means.

On the other hand, it was concluded that the conduct of final hearings through electronic and remote means did not compromise the evaluation of the evidence presented nor undermine the principle of immediacy. In fact, we believe that conducting hearings through telematics means served as a guarantee of the principle of immediacy, especially in the examination of witnesses during a pandemic and in compliance with the rules imposed by health authorities for wearing the required masks and face shields would have disrupted the production of evidence and the strict observance of the principle of immediacy.

5. Conclusions

The advent of electronic judicial procedure, driven by technological advancements and aiming to achieve procedural effectiveness and efficiency, represents more than just an update of technological tools for judicial operators. It signifies a paradigm shift and a change in the nature of the legal process, i.e., an ontological transformation in the theory of the process.

This change retains the previous analog context but necessitates updating and expansion through the integration and conceptualization of new rules and principles of electronic processes. Among these principles are the principle of dematerialization, the principle of deterritorialization of the process, the principle of connectivity and immediacy, the principle of hyper-reality, and the principle of the primacy of structured information within the system. We have made efforts in this paper to advance discussions and reflections on these principles.

Notwithstanding, there is a need for a deepening study of this matter on the part of the courts and academia that must re-evaluate several procedural principles and rules in light of this new electronic judicial procedure.

Concurrently, the legislator must put forward procedural statutes and rules that are thought of and designed in light of the electronic judicial procedure, reshaping the rules and the court organization accordingly.

This discussion becomes even more significant and urgent in the context of administrative justice, given the exceptional pandemic situation we experienced and the constraints on physical interaction it imposed. The widespread use of electronic judicial procedures, in all its dimensions, on a larger scale than initially envisioned by the legislator in CPTA 2019, raises prominent issues and questions for judicial operators.

To overcome the ambiguity and uncertainty of case-specific solutions, a robust conceptual framework is required to ensure consistent interpretation and application of procedural law and to guarantee respect for equality and legal certainty.

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