

# Role conflict and role ambiguity in the work of judges: the perceptions of Portuguese judges

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The reform of the judiciaries of several countries have created a new role for judges, a managerial role, in which judges assume new management responsibilities. This new role is different from the traditional one which focused on judicial tasks, and has generated conflict and ambiguity in the work of judges. This study aims to identify and discuss the conflicts and ambiguities between the judicial and administrative roles performed by Portuguese judges. The research took place in Portugal over the period between 2013 and 2014, and data was collected from in-depth interviews with 12 judges. The research identifies several areas of role conflict and ambiguity in the judges' work. The main conflicts are: incompatibility between the carrying out of judicial and management activities; high workload and insufficient and unmotivated administrative staff; the need to maintain both productivity and judicial quality; and the great responsibility of the position but poor remuneration. The main ambiguities reported are: the formal relationship between judges and administrative officials; the judge's function in the process of court planning; the criteria for the distribution of judicial proceedings among judges; and the criteria to evaluate judges' performance. These results are discussed and a research agenda is suggested.

**Keywords:** judicial management; judge; social role; role conflict; role ambiguity.

## **Conflitos e ambiguidades de papéis no trabalho de juízes: as percepções de juízes portugueses**

Reformas em judiciários de diversos países criaram um novo papel para os juízes, um papel gerencial, em que juízes assumem novas responsabilidades relacionadas às atividades administrativas. Esse novo papel é diferente do papel tradicional, focado em tarefas judiciais e tem gerado conflitos no trabalho de juízes. Com base nesse contexto, o presente estudo tem como objetivo identificar e discutir conflitos e ambiguidades envolvendo os papéis judicial e gerencial, desempenhados por juízes de Portugal. A pesquisa foi realizada em Portugal, entre 2013 e 2014, e os dados foram coletados por meio de entrevistas em profundidade com 12 juízes. Os principais conflitos são: incompatibilidade entre a realização de atividades judiciais e administrativas; carga de trabalho elevada e

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equipe administrativa insuficiente e desmotivada; produtividade versus qualidade do trabalho judicial; e alta responsabilidade do cargo e baixo salário. As principais ambigüedades identificadas nas entrevistas referem-se a: relação formal entre juízes e pessoal administrativo; função do juiz no processo de planejamento dos tribunais; o critério para distribuição de processos judiciais entre juízes; e o critério de avaliação do desempenho de juízes. Os resultados são discutidos e sugeridas pesquisas adicionais.

**Palavras-chave:** administração da justiça; juiz; papel social; conflito de papéis; ambigüidade de papéis.

## Conflicto y ambigüedades entre los papeles de jueces: las percepciones de jueces de Portugal

Reformas judiciales en varios países han creado un nuevo papel para los jueces, el papel de gestor, en el que los jueces asumen nuevas responsabilidades relacionadas con las actividades administrativas. Esta nueva función es diferente del papel tradicional centrado en tareas judiciales y ha generado conflicto en el trabajo de los jueces. Dentro de este contexto, el presente estudio tiene como objetivo identificar y discutir conflictos y ambigüedades entre los papeles judicial y de gestión desempeñados por jueces de Portugal. El estudio se realizó en Portugal, entre 2013 y 2014, y los datos fueron recolectados a través de entrevistas en profundidad con 12 jueces. Los principales conflictos son: incompatibilidad con el desempeño de las actividades judiciales y administrativas; alta carga de trabajo y el equipo de administración inadecuado y sin motivación; la productividad versus calidad del trabajo judicial; y la posición de alta responsabilidad y de bajos ingresos. Las principales ambigüedades detectadas en las entrevistas se refieren a: relación formal entre los jueces y personal administrativo; papel del juez en el proceso de planificación de los tribunales; o criterio para la distribución de los casos judiciales entre jueces; y o criterio de evaluación para juzgar el desempeño de jueces. Se discuten los resultados y se sugiere una agenda para futuros estudios.

**Palabras clave:** administración de justicia; juez; papel social; conflicto de papeles; ambigüedad de papeles.

## 1. INTRODUCTION

Judicial activity is highly institutionalized and socially legitimized. In democratic societies, judges have the guarantee to perform their work independently, without political, social or economic pressures on the content of their decisions. This independence is important because there is an expectation that judicial decisions are taken fairly and based on the law, especially where cases require the recognition of rights and obligations of parties in dispute in contexts with diffuse interests (Posner, 2010).

Administrative activities are increasingly a part of a judge's work. Although this represents an extension of the power of judges, since they take on responsibility for the management of the courts and units of justice, the emergence of this new managerial role, and the expectations and pressures arising from it, have generated conflicts. These conflicts occur because judges need to reconcile judicial and administrative activities, accommodating expectations and demands that are often conflicting or contradictory. These conditions can create a kind of psychic load of work, with consequences such as mental fatigue, as suggested by Dejours (1999) in his study of identity and suffering at work. Also, many judges claim that the new role and administrative activities are increasingly taking them away from the traditional sense of justice (Gomes, Guimaraes and Souza, 2016).

The addition of administrative tasks to judges' work is part of a general reform movement in the judiciaries of many countries, as courts have adopted patterns of New Public Management to manage their resources. As part of this movement, the Council of Europe established the European Commission for the Efficiency of Justice in 2002, a judicial body that is intended to improve the efficiency and functioning of justice in member States and to develop the implementation of the instruments adopted by the Council (Cepej, 2010). The Portuguese Judiciary, where this research was undertaken,

has been changing in line with this movement. However, there are still only a few studies about the effects of these changes, especially in Portugal. In order to fill the gap in the literature, the aim of this study is to identify and discuss conflicts and ambiguities involving the judicial and administrative roles performed by Portuguese judges.

This study is relevant because it is important to know how judges see their profession and how this perception influences court management (Epstein, Landes and Posner, 2013). After all, judges know the judiciary better than anyone else and, arguably, are the only ones to know how the judiciary really operates (Dallari, 2008). The judges' opinions also serve as a basis for improving policy-making and court practices, including human resource management policies. This study is also important because judges themselves have a special interest in knowing what other judges think, so standards of comparison can be established (Gulati and Knight, 2010).

## 2. THE PORTUGUESE JUDICIARY

The Constitution of the Portuguese Republic defines courts as sovereign bodies with competence to manage justice on behalf of the people. In this founding document, the principle of independence of these institutions, in face of other state branches, is expressly enshrining. Portugal had, by mid-2014, 308 first-degree courts, four second-degree courts (appeal courts) and the Supreme Court of Justice. In addition to these courts, there is a Constitutional Court, in charge of judging exclusively causes involving the interpretation of the Constitution, 18 administrative and tax tribunals, a Court of Auditors and the Supreme Judicial Council, which acts as a judicial strategic management agency (Portugal, 2005).

According to the Portuguese Ministry of Justice official data, there were roughly 1.55 million pending cases in Portuguese courts at the end of 2013, most of them in first-degree courts. The population of Portugal in 2013 was 10.4 million inhabitants (Portugal, 2014), which implies an average of one case for every 6.7 inhabitants. This represents a high caseload when compared with the average of European countries, around one case per 20 inhabitants (Cepej, 2014). On the other hand, it is low in comparison with the Brazilian judiciary. In 2014 there was approximately 70 million pending cases in all segments of the Brazilian judiciary, representing an average of one case for every three inhabitants (CNJ, 2014).

Judges are the central actors in the Portuguese judiciary. They are state agents in charge of dispute resolution and have the power to use the force of the repressive state apparatus to enforce their decisions. The three kinds of judges in Portugal, first-degree judges, second-degree judges and Supreme Court judges, must follow the Judicial Magistrates' Statute (Law No. 21 of July 30, 1985). The law guarantees judges security of tenure and that they cannot be held accountable for their decisions. Portuguese judges cannot hold other public or private work positions or be appointed to service commissions extraneous to the activity of the courts unless authorized by the competent authority. The Supreme Judicial Council is responsible for the appointment, assignment, transfer and promotion of judges and the exercise of disciplinary action (Portugal, 2005).

In 2014, there were 1,816 active judges in Portugal, 1,362 in first-degree courts, 394 in second-degree courts, and 60 in the Supreme Court. To become a judge in Portugal an applicant is subjected to a public contest. The Judicial Magistrates' Statute specifies the following requirements to become a

judge: be a Portuguese citizen and able to exercise unconstrained political and civil rights; have law degree; have successfully attended training courses and internships in the Centre for Judicial Studies (CEJ); and satisfy the other requirements established by law for the appointment of state officials. The period of training in the CEJ is two years, and after this period the judge is appointed to work, usually in a small countryside town. A judge's initial activities are usually accompanied by the tutoring of a more experienced judge. Promotion in the judicial career involves work location changes, working in different specialized courts and positive evaluation indicators in every three-year evaluation cycle (Portugal, 2011).

A group of experienced judges appointed by the Supreme Judicial Council carries out the performance evaluation of first-degree judges in Portugal. This process involves interaction between the judge performing the evaluation and the judge being evaluated, in accordance with the statute. The evaluation focuses on how judges perform their established function, the productivity, the level of work difficulty, the working conditions, the judge's technical capabilities and length of service, the results of previous evaluations, disciplinary proceedings, and any further relevant information related to individual performance (Portugal, 2011).

Since the decade of the 2000s, Portugal has witnessed several New Public Management inspired reforms that have contributed to multiple role conflicts and ambiguity, and have obfuscated the work and the role of Portuguese judges. The most relevant of these reforms include the Civil Procedure Pilot-Scheme, approved by Decree-Law No. 108/2006 (Portugal, 2006), which gave judges a crucial role, expanding judges' involvement in some civil proceedings, making judges adopt a more critical view of the procedures and pinpointing judges as the most accountable person for the speed of judicial resolution. One of the main procedural devices of this reform is the duty of procedural management – judges are responsible for implementing and adapting the procedural steps according to the specificities of each case to promote its best possible, swift resolution, and guaranteeing that no useless acts are performed.

The Action Plan to Ease the Courts' Workload, was another major reform package, approved by resolution of the Council of Ministers No. 172/2007 (Portugal, 2007), implemented in 2007 and 2008. It incorporated more than two dozen measures designed to reduce the workload of the courts. The new legislation that accompanied this Action Plan includes legislation on the work of judges, such as Law No. 42/2005 (Portugal, 2005), which alters the legal regime of judicial holidays. The Judicial Electronic Proceedings, the Portuguese Ministry of Justice project for the digitalization of the court's judicial cases, is a third instance of a pervasive reform. The relevant legislation for this project also comprises dozens of pieces of law, including Ordinance No. 114/2008 (Portugal, 2008), which regulates various aspects of the electronic processing of legal proceedings.

The most recent instance of a major reform was the Organizational Law of the Judiciary System, approved by Law No. 62/2013 (Portugal, 2013), which had three main goals: adopting a new model of district management, adapting the territorial basis of judicial districts to the needs of society, and promoting specialized jurisdictions. These measures include “closing down small courts (i.e. courts with less than 250 new cases per year) and transferring their caseloads to larger and geographically close courts” (Santos and Amado, 2014:1). In a subsequent phase, Decree-Law No. 49/2014 (Portugal, 2014) established the regime for the organization and functioning of the courts. The focus of this

new regime is the simplification of judicial procedures, the reduction of the backlog of cases and the quality improvement goals of the judicial system.

### 3. ROLE CONFLICT AND ROLE AMBIGUITY: IMPLICATIONS FOR JUDGES' WORK

Role theory and its application to judges' work is the main focus of this section. Role theory assumes that individuals occupy positions that are socially recognized, called social roles, and the representation of those roles reflects social expectations about how a specific profession or work should be performed (Deutsch and Krauss, 1965; Biddle and Thomas 1966; Howard, 1977). Most everyday activities, including professional activities, are motivated by socially defined categories (for example, teacher, manager, policeman, judge). Role theory helps to explain the changes that have occurred in judges' profiles in the recent decades. Explaining these changes can help the development of a theory of the complex behaviour of Portuguese judges.

A role is a "structured behavioural model relating to a certain position of an individual in an interactional setting" (Yinger, 1965:49), and a social role is defined as a "system of expectations in the social world about the behaviour of the occupant of a particular position towards occupants of other positions" (Deutsch and Krauss, 1965:175). Each role is built by a set of rights, duties, expectations, norms and behaviours that a person represents. The representation of social roles may involve ambiguities and generate different types of conflicts (Jackson and Schuler, 1985).

Role conflict and role ambiguity are important concepts of role theory and the two main components of job stress (Jackson and Schuler, 1985). Role conflict can be defined as the simultaneous occurrence of two or more organizational requirements, in such a way that the performance of one makes the performance of the others more difficult (Katz and Kahn, 1970). Role conflict has also been defined as the extent to which a person experiences pressures within one role that are incompatible with pressures that arise within another role (Kopelman, Greenhaus and Connolly, 1983). In the context of public administration, this might involve the pressure of being a public servant (i.e., pressures from the community) conflicting with the pressures from the government (i.e., political pressures).

Conflict can arise in several situations, such as when new skills are required of a person because of assuming new roles, when there is pressure to deal with new technologies, techniques, or government regulations, or when there is inadequate professional training, which does not allow the professional to adapt to changes effectively (Tarrant and Sabo, 2010). Operationally, role conflict can be understood in terms of congruence-incongruence and compatibility-incompatibility in the following criteria: (a) professional standards, values and behaviour defined for an specific role; (b) professional time, resources, abilities and behaviour defined for performing a role; (c) multiple roles that a single professional should perform; and (d) the various organizational inputs inserted into the administrative policies and rules (Rizzo, House and Lirtzman, 1970).

Role ambiguity is the lack of information provided by the organization about opportunities to progress, breadth of responsibility, and superiors' expectations (Katz and Kahn, 1970). Role ambiguity exists when focal persons, called role incumbents, are uncertain about production process contingencies, and often they are aware of their own uncertainty (Naylor, Pritchard and Ilgen, 1980). Role ambiguity occurs when one or more roles that confront the role incumbent are not clearly articulated and communicated by the organization in terms of behaviour or performance (Kahn et al., 1964). For

Singh and Rhoads (1991) role ambiguity is more amenable to managerial intervention. Implementing programs to diminish role ambiguity may be less difficult than interventions to reduce role conflict.

There is a huge literature on role conflict and role ambiguity in specific areas, such as education (Rizzo, House and Lirtzman, 1970; Schwab and Iwanicki, 1981; Beck and Gargiulo, 1983; Ehly, 1992; Kaufhold, Alvarez and Arnold, 2006; McCarthy et al., 2009; Gavish and Friedman, 2010; Çelik, 2013) and health (Rizzo, House and Lirtzman, 1970; Kaufert and Koolage, 1984; Comerford and Abernethy, 1999; Piko, 2006; Tarrant and Sabo, 2010; Khamisa, Peltzer and Oldenburg, 2013). However, role conflict and ambiguity in the work of judges have hardly received any attention in the public administration literature.

Judges occupy important social positions, and their behaviour, according to role theory, is defined by the expectations and demands of society. The range of social expectations about the judicial work extends along a spectrum from strict compliance and application of law to social activism (Roach, Anleu and Mack, 2007). In recent decades, in the Brazilian Judiciary, as well as in judiciaries in several other countries, the social perception and expectations about general judicial behaviour has shifted from a traditional image of the judge restricted to legal activities, to an image of a more active professional, responsible for other duties, such as solving administrative problems and engaging in social problems (CNJ, 2015; Gomes et al., 2016). Faced with these new expectations, judges have been forced to take on new roles, and perhaps the most striking of these new roles is the managerial one.

With the new managerial role assumed by judges, in addition to legal activities, such as hearings, rulings and resolving lawsuits, judges are also expected to manage courts. The judicial activity is the sole responsibility of judges, and gives society the benefit of the judicial service. The administrative activities are the responsibility of all employees of a specific judicial unit, but are the judges who coordinate this process. These activities are needed to maintain court operations and include managing the court's resources, including financial resources, the workforce and the facilities. As stated by Mendes (2010), judicial and administrative activities have an interdependent relationship and are influenced by decisions taken in the broader institutional environment.

Since courts are very complex organizations, responsible for providing a variety of essential services to society, the management of those organizations requires judges to display multiple expertise capabilities, such as psychology, economics, sociology, and management (CNJ, 2015). Thus, different kinds of knowledge are necessary so that the judge can adequately represent the roles associated with the challenges of his work. However, there is a need to reconcile these different roles, especially the judicial and managerial ones. The search for such resolution can generate several conflicts, as has been pointed out by studies carried out in Brazil on the work of judges (Teixeira, 2012; Vieira and Costa, 2013; CNJ, 2015; Gomes et al., 2016).

Some of the conflicts experienced by judges come from the "quantification of work", which is a tendency to transform everything that is done in the judiciary into objective measures, including the work of the judges. (CNJ, 2015). Gomes and Guimaraes (2013) showed that the most widely used indicators in studies of judicial performance are productivity and efficiency. Trying to make the judiciary more efficient is taken for granted in many countries. One of the consequences of this movement has been the adoption of quantitative indicators to assess judges' performance, which could be the main reason for conflict in judges' work. Another problem in using objective indicators is that the organizational goals may ignore the fact that some judicial proceedings are more complex

than others. The complexity of a case is one of the determining factors of judicial production, since it defines the time and attention required by judges (Voigt, 2016).

Broadly speaking judges are well qualified professionals who have mastered knowledge of the law but are often unprepared to undertake managerial activities. This lack of training results from several factors, including the lack of initiative from judges themselves to acquire managerial capacities and inadequate or non-existent judiciary policies for training judges (Vieira and Costa, 2013). Despite the lack of skills to handle administrative tasks, judges need to perform the activities associated with the managerial role. Some studies show that certain judges resist assuming responsibility for administrative activities (CNJ, 2015; Gomes et al., 2016). One of the main reasons for this behaviour is the time and dedication required by tasks not directly linked to judicial activities.

We believe that most role conflict and role ambiguity in the work of Portuguese judges are associated with the lack of clarity in the definition of the role to be represented, as well as the rules and criteria used in the evaluation of the work performed by these professionals. Some institutional changes that took place in the Brazilian Judiciary, such as those resulting from Constitutional Amendment No. 45, also occurred in the Portuguese Judiciary, as shown in Section 2. Because of this, we believe that the changes that occurred in the role of Brazilian judges, as pointed out in studies presented in this section, were also felt in the working context of Portuguese judges.

#### 4. METHOD

The research took place in Portugal in the period between 2013 and 2014. Data was collected through in-depth interviews with 12 Portuguese judges. Official documents of the Portuguese judiciary were also consulted to contextualize the judges' testimonies. Of the 12 respondents, six were men and six were women; ten worked in the first-degree courts, one in a second-degree court and one in the Supreme Court. The interviewed judges worked in courts in the Northern, Central and Southern regions of Portugal. The average length of the interviewees' careers was 16 years, ranging from four to 39 years. Three of the 12 judges worked in criminal courts, three in civil courts, two in family courts, and the other four in mixed courts. The average length of the interviews was 58 minutes; the shortest took 37 minutes to complete and the longest, 87 minutes.

The first two interviews were conducted with judges who have had some professional contact with members of the research team. Each respondent was asked to recommend one or more fellow judges for subsequent interviews, always keeping in mind the goal of maintaining diversity in terms of area of judicial expertise and geographical location. As the interviews were being taken the saturation of respondents' answers was observed, so that the final interviews added little new information. Eleven interviews were recorded, with the prior agreement of the respondents. Four of the five authors of this article participated in the interviews, simultaneously or in groups of two or three.

Interviews were conducted using a schedule with open questions. Initially, respondents were asked to explain the reasons that led them to opt for magistracy, about their professional career, and of how they perceived their work. Then questions were asked to identify the different roles that the judge plays, especially the judicial and the managerial roles. Some questions on the interview schedule asked about conflicts and ambiguities in the interviewees' work, although interviewers were careful not to use these terms explicitly to avoid directing responses.

The interviews were transcribed and analysed using content analysis techniques, following a two-step process: structural deciphering focused on each interview, and analysis of the crosscutting themes (Bardin, 2011). The most frequent and relevant themes in each category investigated are stated and discussed, including the main conflicts and ambiguities associated with judicial and administrative activities, in the opinion of the judges interviewed. Statements related to conflicts and ambiguities were selected and these passages were divided into categories for each topic. Following this procedure, it was possible to build a general framework of opinions that makes it possible to identify the essence of each interview and to obtain a general representation of each of the topics, categories and meanings.

A second part in the treatment of the data collected consisted of the analysis of the testimonies of each of the interviewees. Unlike the previous stage, the goal here was to understand how conflicts arise in the work of the judges interviewed. The aim was not to identify existing conflicts between the judges interviewed, but rather conflicts over the different roles that the judges must play in their work. Thus, we tried to identify the conflicts in their narratives through the description of events, transitions and changes of meanings.

## 5. RESULTS AND DISCUSSION

To contextualize the results concerning the conflicts presents in the narrative of the judges interviewed, the first part of this section describes how the interviewees perceive their profession and the work they do. A view shared by the interviewees was the social importance of the role played by judges. All twelve respondents stated, directly or indirectly, that the judge is a special public official, carrying one of the greatest responsibilities among all the professions in society. The interviewees stated that, “The work of judges has a dramatic impact on people’s lives”, since it is up to these professionals to “solve problems that range from simple disputes, such as disputes over material goods, to more complex ones, dealing with the freedom of individuals”. One respondent summarized this view: “The work done by the judge involves high responsibility and has high social value because the judge deals with the lives of others. This means that the profession can have a major impact on the lives of others, and can cause stress and suffering due to the judged causes”.

For the majority (seven) of the respondents, one of the attractive aspects of the career is exactly that high degree of responsibility, and judges appreciate and value the impact of their work on the lives of others. Many respondents admitted they like the “sense of power to change something in the life of others” as well as “making decisions with great impact on individuals and society”. As one judge stressed, “As little as it can be, I like to get to the end of the day and conclude that my decisions changed something in someone’s life”. The will to decide and make a difference in people’s lives is just one of the judges’ motivations. Other motivational factors are related to prestige (Cooter, 1983), power within the judicial system (Macey, 1989), promotion to higher courts (Cohen, 1990), professional exposure (Schauer, 2000), popularity and respect (Baum, 2006).

People who are committed to the judiciary, in the opinion of the majority (eight) of the respondents, deprive themselves of many things in life, aiming to provide society with an example of good, moral conduct. As reported by one of the interviewees, “There is a moral stance that is necessary to judge, and this position requires judges to always keep in mind they need to set an example in all the activities they perform”. This exemplary attitude is explained in terms of the authority and power



the judge exercises in society, as pointed out by one judge: “People in general see the judge as the ultimate stage of conflict resolution and social pacification. If, for some reason, the judge has his image and his reputation degraded in the community where he works, his decisions hardly can be legitimized”.

On the other hand, an exemplary moral posture requires many personal sacrifices by the judges. The greatest sacrifices involve lack of time to stay with family and friends, to dedicate time to leisure or to financial gains. (Acting as lawyers, for instance, judges could earn much more than they do). Most respondents gave the impression that the work is the main priority in their lives. Guilt over choosing a judicial career is even expressed with some humour, as one interviewee explained: “I married my career (laughs); I often sacrificed my family life, and many other things that I consider important, due to the career I have chosen”.

Some respondents stressed the importance of the judges’ work through religious metaphors. This feature shows the high level of consideration that judges have for the work they do. Many of those interviewed said they had joined the judiciary as an act of “pure idealism, willingness to follow a calling, a vocation” and view the job as a “priesthood”. For one respondent, the role of the judge in society is almost ‘divine’. In his words: “My mother, who was very religious, said something that marked my life: the function that most brings man closest to God is the judging function. And my life as a judge was always guided by this thought”.

In the opinion of the majority (nine out of 12) of the respondents, the magistracy is an elitist profession, which selects those who really want to be judges, thus preventing the enrolment of people who want a profession just for the wages or other economic incentives. The following testimony, from one of the respondents, shows how judges perceive themselves as a “professional elite”: “Judges are effectively a professional elite; to join the career candidates are tested by rigorous selection and training methods, and additional evaluation. The ones who remain in such a demanding career are the ones who really want to perform those duties”.

The fact that judges are a professional elite can enhance the isolation of the judge from the rest of society. While this exalts the role of the judge and reinforces its importance in society, the elitism distances the judge from the user of the judicial services. Conversely, a few (three) of the interviewed judges perceive it as a profession like any other, with no noteworthy trait making it special. These views lend a more humane character to the judges. So rather than considering themselves to be ‘divine’ or part of an ‘elite’, judges should approach society and seek, above all, to respond to society’s demands for justice. As pointed out by one of the interviewees, despite the difficulties and peculiarities of the work, the judge should not be isolated in his office:

The judge is required to work in different regions, which means a displacement process that distances family and the closest friends. On the other hand, the displacement contributes to the formation of the individual as a human being and as a judge. It is an opportunity to experience different realities; the judge cannot see life only through his office window. So we need to be close to the people, to the society.

Among the 12 respondents, five stated that the search for social justice is the main goal in their careers. As reported by one interviewee: “I always faced my career as a mission, and always with

the concern to do justice, especially to the poorest and more isolated communities”. Often judges concerned about social issues are involved in local community problems, embracing some type of voluntary work or integrating social programs that go beyond their formal duties (Gomes et al., 2016).

### 5.1 CONFLICTS AND AMBIGUITIES

All respondents reported that the managerial role has been increasingly emphasized in their profession. This means that judges are being pressured to assume this new role, and most of those interviewed conformed to this situation. This may indicate that the tasks related to the new role are already part of the routine of many Portuguese judges. Therefore, instead of pointing out conflicts between judicial and managerial roles, most respondents pointed to the conflicts that are inherent to the managerial role. That is, the concern to legitimize the managerial role, which was once a priority, has been now transformed into concern about how to properly perform the new role. This may indicate that most of the judges interviewed have effectively internalized the new managerial role.

The internalization of a new role by Portuguese judges means the incorporation of certain standards, ideas, attitudes, practices or values that these professionals come to regard as their own. Some evidence from the interviews supports the argument that the new managerial role has been internalized by many Portuguese judges. For many of the interviewees the main professional concerns revolve around managerial problems, not judicial problems. This means that most of them do not discuss whether the managerial role is legitimate and therefore should be taken on by the judges, but how to play this new role properly.

If the managerial role has been internalized by many Portuguese judges, it could be argued that there are no more conflicts, only difficulties and / or operational problems regarding the performance of this new role. However, it is important to consider that, in addition to the managerial role, the judge also needs to undertake other roles in his work. As suggested by Katz and Kahn (1970), role conflict is the simultaneous occurrence of two or more organizational requirements, in such a way that the performance of one makes the performance of the others more difficult. Portuguese judges need to manage pressures from different sources associated with distinct roles. The problem is that the pressures within one role may be incompatible with pressures that arise within another role (Kopelman et al., 1983).

In addition to the major conflict between judicial and administrative activities, the judges interviewed identified other specific conflicts, or incompatibilities. The first relates to improving the workload and the reduction in the earnings of Portuguese magistrates. The second relates to the high workload and insufficient workforce to support judges’ work. And the third encompass objective performance indicators and judicial quality. For most of the interviewees, overwork has a “negative effect” and “may interfere with judges’ personal and family lives”. Some judges say that the workload is so high that the work pace needs to be very intense, as shown in the following passage: “I have a work schedule from 9:00 am to 9:00 pm”. Working in these conditions:

The judge does not have time to specialize in their legal practice area, to acquire important new knowledge for his daily life. The judge has virtually no time to participate in local and associative activities. Even worse is that the judge has no time for family and leisure activities.

In addition to the heavy judicial workload reported by the judges, almost all interviewees stated that the administrative workload is also heavy, including a “set of bureaucratic activities alongside the judicial proceedings”, and the management of judicial units and the available resources on these units. The excessive work reported by the judges consists of both an excessive number of judicial proceedings and the incorporation of the managerial role.

To aggravate the situation, according to the interviewees, the administrative staff available in the Portuguese judiciary is insufficient and unmotivated. Consequently, in the opinion of the judges, “One employee has to do the work of two or three and therefore things are done with great effort”. Another interviewee points out that the lack of staff “causes an overload in the work of the judges” since judges need to perform certain activities that are not part of their job description. One respondent summarizes the lack of employees as follows:

Even if the judge dispatches processes quickly, when they reach the Support Section there are not enough staff to enforce the orders and, therefore, things do not flow. In this situation, the judge is overwhelmed and the court’s caseload is steadily increasing.

Some interviewees reported that, “Because of government budgetary constraints, there has been a reduction of staff in the judiciary”, and that the “Retiring workers or those workers leaving the job for some other reason are not replaced”. Therefore, the Portuguese judiciary “has reached alarming levels of staff shortages”. In some courts, there are simply no support staff, as reported by one of the interviewees: “I have no office, I have no one to make me reports, I have nothing; so, my work is handmade”.

In addition, some judges mentioned that many of the existing staff is demotivated. The judges are concerned about the fact that even though the number of new judiciary employees over the past decade has been very low, “the career remains ‘frozen’ and employees have no opportunity to grow”, “generating physical and emotional distress”. The words of one respondent summarized the general perception: “As a rule, employees are already very old, dissatisfied with their jobs and without motivation to study”.

Another conflict stressed by interviewees is the incompatibility between productivity and quality of judicial work. Many interviewees positioned themselves against the dominance of quantitative criteria for the work of judges, particularly those related to efficiency and productivity. They argue that the dominance of quantitative criteria to assess the work of judges represents a simplification of the magistracy’s work, described in the literature as a process of quantification of judges’ work. As one interviewee put it: “The experience produces a vicious circle, in which the knowledge acquired by the judge over the years allows for greater speed in the execution of his work, and speed implies more work, and so we have a kind of endless spiral.”

The belief that judicial work can be measured and quantified can lead to distortions, since data and numbers do not say anything about judicial proceedings. It is important to stress Han’s (2015) criticism of performance in modern societies, that numbers are not a narrative. In this sense, performance evaluation is a conflict identified by most interviewees. The quantification of judges’ work is reinforced by institutional expectations about performance evaluation criteria. For one of the judges, “Performance evaluation requires judges to sacrifice their judicial activities on behalf of managerial

activities”. This indicates that regardless of the acceptance, by Portuguese judges, of their new managerial role, they are still reluctant to accept all the responsibilities and duties inherent in that change.

The salary of Portuguese judges has been reduced over the second decade of the 21st century, in a context of overall reduction of salaries of civil servants in the country. Nevertheless, in that same period, the workload of judges increased, mainly through the increase of managerial activities. Some of the respondents highlight the “inconsistency in demanding that judges undertake new tasks and responsibilities”, associated with the new managerial role, and “return home with a cut in wages”. The conflict over wages is reinforced when Portuguese judges compare their earnings with the earnings of judges from other countries. Official data shows that the salaries of Portuguese judges are amongst the lowest salaries for European judges (Cepej, 2014). The following excerpt illustrates this feeling: “Portuguese judges have been much penalized in their pay in recent years, unlike what has occurred in other countries with economic problems, as is the case, for example, of Italian judges”.

Some judges stated that the wage situation is critical because it “drains the judge of ‘good energy’ to work” and thus “diminishes the commitment of the judge to the job” as “the work no longer provides security and expected comfort”. One respondent goes on to suggest that “the independence of the judiciary is threatened, frankly, when there are judges getting low wages as is happening at this time”.

The conflicts described in this article refer to incompatibilities between requirements arising from the different roles played by judges. According to criteria suggested by Rizzo and partners (1970), these conflicts are classified as: (a) professional standards and values defined in the traditional role of judges (conflict administrative/judicial activities); (b) resources and skills needed to play a specific role (workload/workforce conflict); and (c) different organizational requirements embedded in policies and rules (productivity/quality, and liability / salary conflicts. Chart 1 summarizes the main conflicts discussed so far.

**CHART 1**      **ROLE CONFLICTS REGARDING PORTUGUESE JUDGES' WORK**

	Incompatibility	Conflict description
<b>Conflict</b>	Judicial <i>versus</i> administrative activities	The proper performance of judicial activities by the judges is incompatible with carrying out the administrative activities required in their managerial role.
	Workload <i>versus</i> workforce	There are too few administrative staff and the demotivation of the majority of these officials is incompatible with the heavy workload of the judges.
	Productivity <i>versus</i> quality	The excessive focus on productivity and efficiency in the courts is incompatible with quality judicial work.
	Responsibility <i>versus</i> salary	The great responsibility inherent in the work that the judges perform is incompatible with the low salary they receive.

**Source:** Elaborated by the authors based on research data.

The results of the survey also indicated four role ambiguities present in the work of the Portuguese judges. Role ambiguity occurs when organizations do not clearly define the roles and responsibilities of their employees (Katz and Kahn, 1970). The role ambiguities presents in the judge's narrative, as discussed below, derive from uncertainties or lack of clarity regarding: (a) the hierarchical relationship between judges and administrative officials; (b) the function of the judges in the process of court planning; (c) the criteria for distribution of judicial proceedings among judges; and (d) the criteria for evaluating judges' performance.

The administrative staff of the Portuguese Judiciary is linked and managed by the Ministry of Justice, a department of the Executive. This situation reduces judges' autonomy and authority to manage administrative assistants, even if the judge happens to be a court president, a position occupied by one of the interviewees. Some interviewees emphasized that because of this situation "judges cannot choose, manage or evaluate their own staff", often resulting in "problems regarding commitment, leadership and even authority [...] between judges and assistants". As reported by one of the interviewees:

The judge should have autonomy over the support staff because no one knows better than the judge what can be done with the available staff, whether certain acts can be performed. However, the fact that employees are not subordinated to the judge ends up generating authority issues.

The authority gap between the judges and their administrative assistants clearly generates dissatisfaction among judges. Almost all interviewees mentioned disappointment and frustration with the current situation. As the administrative people are not formally subordinate to judges, doubts arise about what the relationship between them should be. This lack of information prejudices both judges and administrative officials, and it is especially serious because it involves central aspects in the life of a worker, such as opportunities to progress, breadth of responsibility, and superiors' expectations (Katz and Kahn, 1970).

Another ambiguity refers the role of judges in the court planning process. A predominant perception among interviewees is that the planning carried out in the Portuguese courts is flawed and that there is no control over the results. One interviewee stated that, "There are no integrated objectives defined in the courts, [...] each court has its own goals". As each judge sets his own goals, the components required for judicial management, such as production, efficiency and quality indicators, are not standardized, or may not exist at all. This makes court management a very difficult task. One of the interviewees stated: "Actually, there is no evidence to suggest that we are working well or working poorly. There is no past information for comparison, and, perhaps because of that, there are no plans. We just try not to leave the court worse than when we came in."

The definition of working plans is still an uncommon practice in Portuguese courts, as suggested by some interviewees. This is due, firstly, to the "difficulty of setting goals, given the nature of the judicial work", and secondly, to the organizational environment in which each judge operates, with "a high degree of independence and autonomy about his work". The interviewees described recent efforts to modernize several aspects of the courts management. One of the recent strategies to improve the quality of judicial services provided to society is to collect the opinions of the judicial service users (Cepej, 2010).

Another ambiguity often addressed in the interviews was the distribution of judicial proceedings among judges. For some interviewees, caseload distribution is uneven and additional rules should be created to achieve a better distribution of cases. These rules should be clear about “some kind of numeric limit of cases per judge”. One answer illustrates the idea that the judicial cases are poorly distributed and that this situation generates dissatisfaction among some judges: “It is necessary to find a fair equitable distribution of the judges’ workload. It makes no sense, for example, for a judge to have 3,000 cases and have to work day and night, earning just like others who have only 200 or 300 cases”.

An idea shared by most interviewees is that, “All judges work hard, but some judges work harder than others”. The suspicion that the workload is not being distributed fairly between judges creates conflicts between the judges themselves and between judges and managers responsible for the distribution of legal proceedings. This is another example of the lack of clarity in communication between authorities that define labor distribution rules and the judges who carry out this work.

Talking about work evaluation, most interviewees recognise that the judges’ performance evaluation is a necessary and important procedure for several reasons, such as: “helping to improve the quality of services”, “increasing transparency in the courts through the disclosure of information to society”, “pressing the judges who have low performance”, “generating parameters that can be used in the comparison of judges and judicial units” and “generating competition among courts”. However, some interviewees highlighted the difficulty of evaluating judges’ work. One respondent stated that “a judge should be evaluated in a way that, at the bottom line, is not feasible [...], the evaluator should check what has been done in each of the cases, something that would take a very long time”. One of the judges holds the radical opinion that “the work done by the judge should not be evaluated”, or, ultimately, “evaluated only in disciplinary terms”.

Evaluating judges’ performance is an open question due to the legitimacy issues about who can assess judges’ performances. The independence of judges entails a diffuse form of power where no individual judge or tribunal has hierarchical autonomy to instruct other judges how to do their jobs or what to do in their jobs. In formal terms, only another judge from a superior court can evaluate the merit of a judge’s decision. As a rule, judges do not like to be evaluated (Choi and Gulati, 2005). This is due to the nature of the work that these professionals perform, with subjective results that often cannot be simply considered good or bad. Lienhard (2014:31) suggests that judges’ performance assessment is a question that arises from the conflict between guaranteeing justice and protecting the judiciary.

Most interviewees were very uncomfortable with the evaluation criteria used by the Portuguese judiciary to manage the progression of their career. There is a fear among judges that the Portuguese government might begin to adopt policies that link the salary of judges to their productivity. If that happens, as one interviewee said, “The magistrate can turn into a factory of decisions”. Part of the problem occurs because not even judges are certain what the most appropriate criteria and indicators should be for assessing their work. Judges are uncertain about production process contingencies, and they are often aware of their own uncertainty (Naylor, Pritchard and Ilgen, 1980). In other words, even if they challenge the current evaluation criteria, most judges recognize the difficulty in defining adequate criteria for evaluating their work.

All the role ambiguities described in the interviews encompass gaps and shortcomings in the communication of organizations responsible for managing the judiciary with judges. This fact reinforces the understanding that such communication should be clearly articulated by organizations in

terms of behaviour and performance (Kahn et al., 1964). Chart 2 presents a summary of the main ambiguities at work mentioned by the judges interviewed. Also presented are the uncertainties that characterize the ambiguities, as well as a description of each ambiguity.

**CHART 2**      **ROLE AMBIGUITIES REGARDING PORTUGUESE JUDGES' WORK**

	Lack of definition	Ambiguity description
<b>Ambiguity</b>	Hierarchical relationship between judges and administrative officials	Administrative officials are not subordinate directly to the judges, but to the Ministry of Justice. This raises doubts about the judges' authority over these professionals.
	Function of the judges in the process of planning of courts	Judges' responsibilities and tasks in the court planning process are not clearly defined. This results in faulty or non-existent planning.
	Criteria for the distribution of judicial proceedings among judges	Lack of clarity about the criteria for the distribution of judicial proceedings among judges. This could produce imbalance in the judges' workload.
	Criteria adopted in evaluating judges' performance	Lack of clear performance evaluation criteria, considering the activities associated with the different roles. This results in confusion on the part of the judges as to how to prioritize the activities they perform.

**Source:** Elaborated by the authors based on research data.

**6. CONCLUDING REMARKS**

This paper sought to identify and discuss the perceptions of Portuguese judges regarding the conflicts and ambiguities resulting from the new managerial role assigned to them. Twelve judges, from distinct courts, working in all Portuguese regions, were interviewed. The analysis of the judges' accounts shows that there are several conflicts and ambiguities present in the work of these professionals.

The conflicts reported involve some incompatibility between: (a) judicial and administrative activities; (b) high workload and insufficient workforce; (c) productivity and judicial quality; and (d) responsibility and low salary. The ambiguities reported involve uncertainties regarding (a) the formal relationship between judges and administrative staff; (b) the function of judges in court planning processes; (c) the criteria for distribution of legal proceedings; and (d) the criteria for evaluating judges. These role conflicts and ambiguities were described and discussed according the theoretical framework.

Several aspects highlighted in the analysis are contradictory. For example, most of the judges interviewed stress that their role in society can be considered as part of an "elite". At the same time, judges complain about their wages like any other professional, arguing in favour of better pay, given

their prominent role in the community. Another example of contradiction is associated to the idea of a calling, vocation or “priesthood” mentioned by some judges and their focus on how wages and productivity-based incentives affect their work motivation. On the other hand, as suggested by Posner (2010), the *homo economics* approach could be one approach to analyse judges as professionals. In this case, these supposed contradictions are not contradictions. These cognitive dissonances, brought to light by the present study, should be part of additional research seeking to clarify the reported tensions and apparent paradoxes.

It is necessary to clarify one of the points most mentioned in the interviews, the salaries of the judges. Due to the economic crisis faced by Portugal, especially since the 2000s, Law 55-A / 2010 (Law of the State Budget for 2011) resulted in a 3.5% to 10% reduction in the earnings of Portuguese public servants, including judges and members of the Public Prosecution Service. In the period from 2015 to 2016, after our data collection, important changes occurred in the economic policy of Portugal. The salaries of the judges were readjusted, so that there was a leveling with the salaries of judges from other European countries. As reported by the European Commission for the Effectiveness of Justice, the gross earnings of judges at the beginning of their careers in Portugal (€ 35,699) is slightly lower than the average in European countries (€ 36,698). Regarding the gross salary of judges in the Supreme Court, the average in Portugal (€ 85,820) is well above the average in European countries (€ 65,760). From 2016 onwards, cuts in judges’ salaries began to be redressed (Cepej, 2016).

The results of the research provide important new information for the improvement of court management. In theoretical terms, the study suggests a classification of the conflicts in the work of Portuguese judges. In addition, the results confirm the findings of studies carried out in Brazil, indicating that Portuguese and Brazilian judges share similar work conflicts. In practical terms the study shows that Portuguese judges have different perceptions and attitudes toward their new managerial role that should be treated in a specific, differentiated ways. This may contribute, for instance, to a better allocation of judges to courts, so that judges with a ‘managerial profile’ can be allocated to courts with a higher administrative workload.

So that conflicts and role ambiguities do not hinder the provision of judicial services, it is important to monitor the phenomenon. As some conflicts are associated with ambiguities at the institutional level, as indicated by the results of this and other studies, judicial managers should first face the problem of ambiguity. Generally, role ambiguity is more amenable to managerial intervention, so implementing programs to reduce role ambiguity may be less difficult than interventions to reduce role conflict (Singh and Rhoads, 1991).

The limitations of this study are, first and foremost, the impossibility of generalizing the results, because of the small sample size and to the research method, and, second, given the difficulty of interviewing judges, the criteria for selecting respondents may have produced some bias. These limitations were partially mitigated by holding interviews in all Portuguese regions, with judges from different judicial specializations and associated with all three degrees of the Portuguese judiciary.

The replication of the study in other countries is recommended, especially in those that share cultural and geographical ties with Portugal, as it is the case of Latin American countries, especially Brazil. The extension of the scope of this kind of analysis to other legal professions is also recommended, to examine, for example, whether the profession of public prosecutor is plagued by similar problems. The



results are also helpful in providing a list of items that could be included in a questionnaire focusing on 'judicial work' to be used in large sample research in Portugal and other countries. This kind of survey could produce generalizable knowledge on the subject. The conducting of additional studies in Portugal, to identify and compare the emerging issues resulting from the new organization of the Portuguese judicial system, effective from September 2014 onward (Portugal, 2013) is also suggested.

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