



Conferência Internacional

Os Novos Desafios da Advocacia Europeia

Jornadas em Memória do Bastonário Coelho Ribeiro

WELCOME MESSAGE

Please allow me to begin this welcome message with two quotations¹ of our dear Friend, Colleague and President of the Law Bar Association Coelho Ribeiro, whom we appropriately and fairly pay homage to, at our International Symposium, organized by the Lisbon Council of the Portuguese Law Bar Association:

I quote:

"To search for justice and the attempt to be fair is one of the human being's constant ambitions."

"Justice is the purpose of all the work accomplished by a professional in the field of law: Justice in society, justice of mankind for mankind."

I have been wondering for years why our beloved and taciturn Colleague would pronounce five times the words 'fair' and 'justice' in two short sentences.

Was it merely for reasons of argumentative rhetoric? Or was it rather a deep need to stress that, apart from the interpretation and the strict application of the law (supply of a service) and the economic activity of the attorneyship (carry out a profession) there are higher values

¹ Conference carried out in Rio de Janeiro, Brazil.



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to pursue, values that belong to the profession (vocation and mission – *ad Justitiam*) and which make it unique and unmistakable?

The attorney², with an individual vocation or with a spirit of collective mission, while indefatigably searching for fairness and justice, is not a mere freelance professional like others, nor is he tradesman for laws or a law industrialist, or even an attorneyship businessman or a mere fungible supplier of judicial services.

The attorney is, or should be, the legitimate example and the ultimate expression of fair mankind and of the objective of Justice. He is frequently, when everything else fails, the last and only hope for “Justice in society and Justice of mankind and for mankind”.

The Attorneyship in Portugal is expressly enshrined in the Fundamental Law³, the Constitution of the Portuguese Republic and the Statutory Law⁴, the Court’s Organic Law and the Constitution of the Law Bar Association.

² The key concepts which define the concept of an attorney are: liberal profession, total independence, absolute secrecy, post of public interest, Justice’s administrative body, social representative, exercise of citizenship and building up of active solidarity, guaranty of the person’s dignity, his/her life and human activity and bulwark of liberty and fundamental human rights.

³ Our fundamental law, the Portuguese Constitution, decrees by its article 20, no. 1 and 2 as follows: “everyone shall be guaranteed the access to the law and to the courts in order to defend those of his rights and interests that are protected by law, and justice shall not be denied to anyone due to lack of financial means” and that “subject to the terms of the law, everyone shall possess the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority” and article 208 establishes that “the law shall ensure that lawyers enjoy the immunities needed to exercise their mandates and shall regulate legal representation as an element that is essential to the administration of justice.”

⁴ Therefore, article 114 of Law no. 3/1999, of 13th January (Judicial Courts Law), foresees “the law shall ensure that lawyers enjoy the immunities needed to exercise their mandates and shall regulate legal representation as an element that is essential to the administration of justice.” explicitly instituting “the right of protection of professional secrecy; the right to freely exercise the support and the right to be left unsanctioned for actions taken according to the profession’s Act and the right to special protection of the communications with the client and to the preservation of the secrecy of the documents relevant for the defence”. Moreover, the article 61, no. 3 of the Portuguese Bar Association’s Act, ratified by Law no. 15/2005, on 26th January, establishes that “The judicial mandate, the representation and the assistance by an attorney are



Conferência Internacional Os Novos Desafios da Advocacia Europeia

Jornadas em Memória do Bastonário Coelho Ribeiro

The Attorneyship is an ancient profession, a noble and prestigious function, of public interest, with specific rules and a very own matrix, founding, not transferable and unmistakable. The profession is however not less differentiated, with very diverse nuances, according to the geographical location and the specific way in which it is being carried out, that is as an attorney performing as an individual, working with a company or with a law firm.

An essential element to the Attorney's performance, in any of the referred ways, is his absolute *independence and autonomy*; the enshrinement and scrupulous respect for the *professional secret*; the absence of any possibility for strangers and for the *de facto* powers and state powers to interfere with abusiveness; the wide freedom of the counselling and of the mandate and the necessary immunity while performing the acts inherent to the profession.

In the world and in Europe, non-attorneys are (rightly) not allowed to personally perform acts which belong to our profession.

In Portugal, there is legal impediment for any person who does not possess the qualification of an attorney, to perform acts that belong to the profession of an attorney. Doing so would imply committing a crime.

always to be admitted and can by no means be hindered before any jurisdiction, authority or private or public entity, namely for the defence of rights, support in controversial jural relations, combination of interests or for a simple fact finding process, even if merely administrative, officious or of any other nature". Furthermore, the article 67, no. 1 of the above mentioned Portuguese Bar Association Act, in which the guarantees are referred to in a general way, establishes concretely that "the judges, as authority agents and public servants should, while they exercise their profession, guarantee the attorney's treatment to be compatible with the dignity of the advocacy and also ensure adequate conditions for the correct accomplishment of the mandate".



Conferência Internacional Os Novos Desafios da Advocacia Europeia

Jornadas em Memória do Bastonário Coelho Ribeiro

*Alternative Business Structures*⁵, that is multidisciplinary law firms, are not permitted in Portugal.

Although nothing prevents us from cooperating with third professionals, it wouldn't be advisable to be confounded, and above all to be fused within a business structure of equals and under equal circumstances, merely through legal fiction. This kind of structure is forbidden in Portugal⁶ and only allowed in the United Kingdom and in Australia, where it creates more problems⁷ than advantages⁸, including for the citizens and companies which *contra natura* cooperate with such kinds of law firms.

⁵ The ABS (*alternative business structures*) are multidisciplinary societies that allow law firms to have new forms of organization and ways to explore their activity, for example, by constituting partnerships with non-legal professionals (insurance intermediaries, enforcement public officers, bank employees, financial employees, public notaries, etc). This type of societies allows, therefore, external investment and agregation of non-attorneys that, by being associated with lawyers, build this alternative mode of community law practice.

⁶ Are the ABS admitted by portuguese law? And should they be? No and No. The structure, principles and targets breach legislative norms that, in our country, rule those matters: articles 1 no.2; 5; 6 no.1; 12; 16 no.1; 17 no.4; 24 no.1; 30 no. 3; 33 to 37; 48; 60; all from the Legal Act of Lawyers Societies and articles 68;70;71;76;84;87;94 from Portuguese Bar Association's Act. Accepting ABS in the Portuguese law would presuppose a revolution in Portuguese legal practice and a substantial modification in the nature of Portuguese Law firms as well as a profound review of the above mentioned legal statutes. The ethic rules would be even more restrictive and should become multidisciplinary with external consequences that are difficult to predict. The rules regarding the Law firms should decree relentless criteria in order for lawyers to be associated to other non-legal professionals as well as a set of warranty duties that will allow to maintain the legal practice unscathed. At the moment, there are no conditions to this admission. The legal practice is being developed in a way that involves accurate specialization and knowledge focus in professionals that tend to be prepared to some specific law branches. The *ratio* of Portuguese Bar Association's Act predicts cooperation, assistance, consulting, but never the lawyers association to other non-legal professionals. Which is, moreover, understandable as legal practice is an activity strongly supported on principles and values rooted on a specially sensitive ethic and, therefore, undoubtless above any strict and economic or merely professional interests

⁷ We allow ourselves to present the risks by topics:

- a) increased risk of breaching professional secrecy;
- b) increased risk of serious and unbreakable interests conflicts;



Conferência Internacional

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Jornadas em Memória do Bastonário Coelho Ribeiro

What are law firms and what should they be?

Law firms are partnerships between attorneys. They are not, and shouldn't be, partnerships of attorneys and other professionals.

However, it is not the case all over the world anymore. At present, it is only like that in Continental Europe and in America.

In Portugal, law firms are only composed of attorneys. Otherwise, the law firm must be closed due to the fact that the object of the company is illegal when put in practice by non-attorneys. There are concrete acts which remain reserved to the attorney or the advocacy,

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- c) leakage and confusion about the basic values related to legal counseling;
 - d) abusive generalization of "specific" attorney's acts;
 - e) excessive globalization and commodification of legal practice;
 - f) decrease of the ethic independency and the technical autonomy inherent to legal profession;
 - g) increased risk of *de facto* and state powers interference;
 - h) increased risk of breaching professional ethic rules;
 - i) increased risk of duty conflicts due to incompatibility of the foreseen rules for each professional activity;
 - j) unlawful clientele gathering;
 - k) increased risk of difficulties in liability's distribution;

⁸ We allow ourselves to present the advantages by topics:

- a) costs distribution;
- b) access to financing;
- c) approach to a wider clientele;
- d) increased flexibility by legal practicing and activities
- e) upgrade on the quality of the services provided to that clientele because of the availability of professionals from transversal or parallel working areas;
- f) increased competitiveness and increased variety of services can lead to a quality's upgrade;
- g) knowledge's exchange promotes upgrade of the cognitive's resources and of the developed activity
- h) attorneyship's modernization
- i) wider access to Law
- j)



Conferência Internacional Os Novos Desafios da Advocacia Europeia

Jornadas em Memória do Bastonário Coelho Ribeiro

the defense or the counseling, and which would be persecuted as the crime of unlawfully performing a legal act by a non-attorney (*procuradoria ilícita*)⁹ or of usurpation of functions.¹⁰

In summary, the attorney will only be, or can only be fair and useful to Justice if he can act without constraints, without fetters, without being dependent on third persons; if he is able to continue being free and independent; otherwise, it is not possible to demand honorable action, technical autonomy, exemption and responsibility, disinterested engagement, honesty and loyalty, firmness, probity and straightness; verticality, courtesy and sincerity; and, last but not least, excellence, courage and grace.

Without regarding the conflicts of interest, the dependence on or the permission of the intervention of third persons within a law firm is not just a risk, but also an open door to the violation of professional secret and a wide open window for the real danger of interference of *de facto* powers and even governmental powers in the criteria, the shapes and performances of law firm structures open to strange bodies like the already in the United Kingdom and Australia existing and so-called alternative business structures.

I might, however, be wrong. In that case, I need to be convinced.

Therefore, I will listen to you attentively.

⁹ Article 7 no. 1 from the Lawyers and Solicitors practice Act approved by Law no. 49/2004 on 24th August decrees that “*whoever, breaching the dispositions foreseen in article 1 a); practices actions only allowed to lawyers or solicitors; b) helps or collaborates in practices only allowed to lawyers or solicitors, shall be punished with imprisonment sentence of up to one year or with a fine penalty up to 120 days*”.

¹⁰ Article 358 from the Portuguese Penal Code approved by Law no. 59/2007 on 4th September, decrees that “*whoever: (...); b) falsely (expressly or implicitly) pleads to hold a title or the fulfillment of certain requirements to practice an occupation or an action for which the law demands a title or the fulfillment of certain requirements shall be punished with imprisonment sentence of up to two years or with a fine penalty of up to 240 days*”.



Conferência Internacional Os Novos Desafios da Advocacia Europeia

Jornadas em Memória do Bastonário Coelho Ribeiro

I would like to welcome you all, and especially the speakers; I wish you good work and profitable discussions.

Recognizing in advance your honoring presence and prestige, which enriches our conference, I would like to thank you all for being here and for your interventions.

I also thank you for your past, present and future lessons on life experience.

Above all, I thank you for your example of distinguished attorneys and presently for your wise words.

I will now give you the floor with great satisfaction and to the benefit of all of us.

Carlos Pinto de Abreu