



Conferência Internacional

Os Novos Desafios da Advocacia Europeia

Jornadas em Memória do Bastonário Coelho Ribeiro

Dear colleagues,

We had the privilege to learn and debate in this Conference the challenges of law practice and the profile that a lawyer of the next decade should have.

It was an exercise of prognosis for the Portuguese law practice based in realities that we are already feeling in the European territory. Someone has already said in football language, that the prognosis can only be made at the end of the game. We saw, however, that the game is already at stoppage – time/ injury time.

We had the privilege of learning and debating the diversity of this profession, in cultural terms, in law systems, in challenges, and changes (wind of change). The diversity in the size of law firms. The diversity in the *practice* of each one. The diversity in the concerns of each national legislator.

But we also had the privilege of learning and debate what unifies us, as lawyers in the European and global space.

I reread some parts of the speeches of our former Bar Chairman Coelho Ribeiro from the early nineties. They are remarkably actual and clear, in his constant search for the European lawyer profile in the diversity of each culture.



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In October of 1991, in the Conference of the Colégio de Abogados de Barcelona, he said

“As much utilitarian, liberal and mercantile that the economic and legal space where we practice our profession may be, the truth is that we cannot give up, and maybe we should bind others, the respect for our deontological rules.

Today, as weird as it seems, we feel more and more part of our cultural and national roots but, at the same time, in this diversity we cannot renounce that we are an integral and active part of the European reality. It’s in this coherent and intelligent balance that we move.

An individual lawyer, working alone in his tremendous and admirable effort, moving from group exercise, in society, specialization and other more appearing sophisticate ways that are emerging since transnational practises to multidisciplinary, many of them having nothing to do with law.

How many challenges, how many difficult situations are lawyers dealing in these present times! How can we resolve all this panoply of problems without losing the identity of a profession as old as the men itself in his life within society? This is the biggest challenge!”

These words were written twenty years ago!

In these words we stumble on the message to find our common identity before the new challenges of our profession. These challenges are already identified: “Economics rules all” and the argument “Why are lawyers any different to taxi-drivers?”



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Twenty years ago it was not predictable the impact of liberal professions in the European Economie. But today we know that represents a labour market for 3 millions Europeans. It is responsible for 3% of the GDP and presents a growth of 5% per year. We have to understand that economic politics of the governments go by acting in the fields of liberal activities. So far, nothing unexpected/ unusual.

The challenge arises, however, when the European Commission and the national Governments deal with the law practice indiscriminately in the general meaning of regulated professions, without any reference to its public interest purpose, as we recently verified with the transposition of the Service Directive.

And the challenge arises when the announced reforms of our profession have exclusively as background economist's concepts, without attending the impact they may have in the system of justice and in the Rule of Law.

Do not forget/ I remind you that the United States are following close by the desired reforms for the European Union that are already in use in the United Kingdom. Recently it was published a study by Laurel Terry, from the Penn State University, with the title The European Commission Project Regarding Competition in Professional Services, that sublimes (and I quote)

"Before a society makes substantial and fundamental changes to its lawyer regulation system and system of justice, it is necessary and appropriate to talk about the likely impact of those changes on the justice system and rule of law. Numerical data and charts can appear "objective" but can also mask non-objective and "non-scientific" assumptions about how the data is collected."



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It's enough to look at the last inquiry of our profession, 2003, to find out that in Portugal the improvement of the relationship between law practice, citizens and citizenship pays less attention/does not care about /to academic problems of competition.

Some think that the improvement of the relationship would require the realization and fighting an excess in competition and not a lack of it. But I don't follow that pattern/ I won't go that way.

I understand that the way to find the common denominators to the profession of lawyers in Europe, the path to the lawyer profile as the one trailed by Coelho Ribeiro – goes by questioning the recently named primacy economist.

Not so long ago, a commission of the United States Congress was investigating the way that the deontological rules and ethics of the profession served rightly the interests of the society. In one of the sessions one of the congressman challenges a lawyer, saying "If you behave like businessmen we shall treat you like businessmen".

I cannot go on without pointing/stand out the role of the magistrates, who have acknowledged jurisprudentially the nature of public interest of our profession. And I let hereby my statement in front of the judge Mr. Sousa Pinto, Vice - President of the Tribunal da Relação de Lisboa (Lisbon Court of Appeal), who honoured us with his presence.

I refer/ point out, in relation with many others seizures, the decisions of the Court regarding the cases Wouters and Arduíno and (collective court decision) Acórdão do Tribunal Constitucional nº 588/2001.

I also quote a decision/ judgement/ sentence of the Tribunal Judicial da Comarca de Resende, of the 7 of March of 2008, which acquitted a lawyer of the crime of refuse of testimony by concluding, after an extremely cautious deliberation of the values in



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conflict: the duty of confidentiality in face of the duty of obeying a court order that order the testimony. A sentence that was at all levels notable by the consistency of its balancing of values.

I cannot however go on without pointing that in the lawyer's point of view, the majority of the jurisprudence of our Courts have however not demonstrated a correct apprehension of the relevance of the confidentiality for the Rule of Law. When the Court has to balance between the interests: confidentiality and the finding of the true. In this matter, the Bar Association has shown some lack of inventiveness to raise magistrates' awareness. This could act as a synallagma/ synallagmatic contract for the initiative of the District Board in the matters of the confidentiality duty that was promoted this year on the round of conferences.

I sincerely hope that reforms promoted by the European Commission won't lead us to a scission in this profession. For that we have to rediscover in the middle of the European law practice, our common values, the core values, in the elaborated expression of CCBE.

We have to fight for the unequivocal recognition of our profession as public interest. For the recognition of the lawyer role in the Rule of Law. And fight for the unwavering principles of our profession in the diversity of the European space. The principles of independence, confidentiality and rules of conflicts of interest. Against a purely economic vision of our profession.

As one day stated by Niels Fisch- Thompson, former president of CCBE "We, lawyers, have to choose between being sons of Pallas Athena, god of wisdom and justice, or Hermes, god of commerce."



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In this struggle we will find the answer to the challenge of the former bar Chairman Coelho Ribeiro, to find what unite us in the diversity.

For this answer our notable speakers (of this conference), also united in the diversity, contribute

In the name of the District Board of Lisbon I would like to thank you all (express my gratitude)

Jaime Medeiros