

Justice based on good faith N VASCO DE ATAÍDE MARQUES

Some time ago, I wrote an article in a newspaper about witnesses being allowed to give evidence via Skype when they are located abroad. In the intervening period, this practice has become common in the Portuguese courts.

In fact, I see no reason why witnesses living abroad, who are called to give evidence in cases pending before the Portuguese courts, should be required to appear before the court in Portugal in person.

I am well aware of the fact that there will always be mistrustful or ill-intentioned people in the system who believe that, if there is no verification by the court in question or at least by a foreign court before which such witnesses appear to be heard by videoconference, there is always the risk that the person who appears to give evidence may not, in fact, be who he or she claims to be.

I must say that I have already taken part in dozens of witness examinations via Skype and that I have never come across such mistrust, whether in rela-

tion to witnesses called by me, or in relation to witnesses called by the opposing party.

Indeed, I believe that an attempt of this type would, on the one hand, be extremely risky because of the responsibility it would entail and, on the other, it would have a very low probability of success, because the parties always pay a great deal of attention to the witnesses and they would very quickly notice subterfuge of this kind. Allowing witnesses to give evidence in this way is, in my opinion, yet another demonstration of the fact that Portuguese justice has gone through an extraordinary evolution in recent times. It has changed from a system that mistrusted everything and everyone, to a system that places responsibility on the person giving evidence. For this reason, as I see it, it has

changed into a system that is based on good faith.

A symptom of this is the fact that the majority of the more or less solemn acts have ceased to require the intervention of a notary, and the responsibility has thus passed to the persons executing the document. Once again, sceptics would say this is very dangerous, because any person could make a false declaration. My experience tells me precisely the opposite. In general, the Portuguese respect the authorities and fear any consequence of conduct that could be classified as illegal. Furthermore, I think this is a European sentiment. I believe, in general terms, that the Portuguese and Europeans in general respect the State and are averse to giving false declarations, especially when those declarations are recorded for eternity.

This evolution is, in fact, very important to increasing the efficiency of the legal system.

We have moved from a verifying system to a system that imposes sanctions when the rules are broken. In my opinion, this has been one of the reasons why Portuguese justice has experienced a very positive evolution over recent years. Even the judicial system has evolved in the right direction and, even though it is not making decisions at the desired speed, it does decide the majority of cases three times faster than it did 10 or 15 years ago.

If this trend continues, I am convinced that, in only a few years, we will see judicial disputes being resolved within a relatively short timeframe, with all this means for improvements to life and business in Portugal.



Vasco de Ataíde Marques, partner and head of the PLMJ German Desk and of PLMJ's office in the Algarve. (Photo: Supplied)

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