



Oñati International Institute for the Sociology of Law  
Instituto Internacional de Sociología Jurídica de Oñati

Oñati  
Socio-Legal Series

ISSN: 2079-5971

Oñati Socio-legal Series, v. 6, n. 3 (2016) – Past, Present and Future of Sociology of Law  
ISSN: 2079-5971

## Courthouses as Spaces of Recognition, Functionality and Access to Law and Justice: A Portuguese Reflection

PATRICIA BRANCO\*

Branco, P., 2016. Courthouses as Spaces of Recognition, Functionality and Access to Law and Justice: A Portuguese Reflection. *Oñati Socio-legal Series* [online], 6 (3), 426-441. Available from: <http://ssrn.com/abstract=2812699>



### Abstract

One of the most overlooked topics at the level of reflection regarding law and the legal system has been the courthouse architecture. Architecture organizes and structures space, making it intelligible, understandable, and capable of being interpreted as possible, being that the exterior and interior, as well as materials and objects present therein can facilitate or inhibit our activities through how they mean and represent certain messages. Hence it becomes necessary to make an analysis of the spaces of justice - and here I have in mind the Courthouse as a privileged public space of justice – taking into consideration the circumstances of time, place of jurisdiction, the historical, political, regulatory, and socio-cultural contexts, as well as legal tradition. Thus, and by analyzing the trends (international and national) of development of construction and / or adaptation (types of buildings and internal organization, focusing on different infrastructures and accessibility) and respective use, including, here, the representations and spatial practices of the real actors (professionals and users), I propose to consider the importance of regarding courthouses as spaces of justice, through the lenses given by the functions of recognition, functionality and access to law and justice.

### Key words

Courthouse Architecture; Recognition; Functionality; Access to Justice

### Resumen

Uno de los temas sobre los que menos se ha reflexionado en el ámbito del derecho y el sistema legal ha sido la arquitectura de los juzgados. La arquitectura organiza y estructura el espacio, haciéndolo inteligible, comprensible y capaz de interpretarlo como algo posible, ya que el exterior y el interior, así como los materiales y objetos presentes, pueden facilitar o inhibir nuestras actividades mediante la forma en que emiten y representan ciertos mensajes. Por lo tanto, es necesario realizar un análisis de los espacios de la Justicia - y aquí se entiende el juzgado como un espacio público privilegiado de la Justicia - teniendo en cuenta las circunstancias de tiempo, lugar de jurisdicción, los contextos históricos, políticos, regulatorios y socio-culturales, así como la tradición jurídica. De este modo, se propone considerar la importancia de considerar los juzgados como espacios de Justicia, a

\* Patrícia Branco is Researcher, Centro de Estudos Sociais, Universidade de Coimbra, where she is currently developing a post-doctoral research project (funded by FCT - Ref. SFRH/BPD/102236/2014). Colégio de S. Jerónimo, Apartado 3087, 3000-995 Coimbra, Portugal. [patriciaab@ces.uc.pt](mailto:patriciaab@ces.uc.pt).



través de las lentes dadas por las funciones de reconocimiento, funcionalidad y acceso al derecho y la justicia, para lo que se analizarán las tendencias (internacionales y nacionales) del desarrollo de la construcción y/o adaptación (tipos de edificios y organización interna, centrándose en diferentes infraestructuras y accesibilidad) y el uso respectivo, incluyendo, aquí, las representaciones y prácticas espaciales de la actores reales (profesionales y usuarios).

**Palabras clave**

Arquitectura de juzgados; reconocimiento; funcionalidad; acceso a la justicia

**Table of contents**

1. Introduction .....	429
1.1. Methodology.....	431
2. A Portuguese profile.....	431
3. The dimensions of recognition, functionality and accessibility .....	433
3.1. The recognition dimension .....	433
3.2. The functionality dimension.....	435
3.3. The dimension of access to justice .....	436
4. Concluding remarks .....	438
References.....	439

*Court Number One had laid its spell on her since she had first entered it as a pupil. (...) she responded to this elegant wood-panelled theatre with an aesthetic satisfaction and a lifting of the spirit which was one of the keenest pleasures of her professional life. There was a rightness about the size and proportions, an appropriate dignity in the richly carved coat of arms above the dais, and the glittering seventeenth-century Sword of Justice suspended beneath it, an intriguing contrast between the witness-box, canopied like a miniature pulpit, and the wide dock in which the accused sat level-eyed with the judge. Like all places perfectly designed for their purpose with nothing wanting, nothing superfluous, it induced a sense of timeless calm, even the illusion that the passions of men were susceptible to order and control.*

P. D. James, *A certain Justice* (1997)

## 1. Introduction

Courthouse architecture carries with it an intention, suggesting and imposing a certain view of the social world (Commaille 2013). To Boulad-Ayoub (2008), the courthouse, considered as a cultural and ideological institution, contributed to the construction of the political frames of our social references. The architectural evolution of courthouses - from roman *fora*, circles of stones and trees; from church halls to taverns and town halls; from the neoclassical, Greek and gothic revival temple/palace of justice; to the fascist apparatus of the dictatorships (as was the Portuguese case); and leading to the contemporary courthouses (... or even hyperspace! ) - responded, historically, to the gradual empowerment of the judicial function, the imposition of new professions (like lawyers and architects), changes in the trial process, and the political, juridical and economic powers of each period<sup>1</sup> (Jacob 1994, McNamara 2004, Mulcahy 2011). Last, but not the least, the shapes imposed by architectural tendencies over time<sup>2</sup>, as well as new trends in

<sup>1</sup> It should also be noted that, interestingly, the courthouses' buildings embodied the same architectural shapes in different political regimes, such as monarchy, republic, democracy and dictatorship (see Madranges for France; Mulcahy for the UK; Nunes for Portugal). Take, for example, the courthouses built in the 1930s in the United States, and the ones built in Portugal in the dictatorial *Estado Novo* (or New State), between the decades of 1950-1960: the art deco style crossed continents and times during the 20th century.

<sup>2</sup> Nowadays, however, there is a rupture with the architectural models inherited from the past. Nevertheless, it is unclear what will or may be the courthouse architecture paradigm(s) for the 21<sup>st</sup> century. Between projects by "archistar"s, such as Richard Rogers, David Chipperfield or Dominic Perrault, and adaptations of existing buildings, justice seems to take place in spaces ranging from high-tech architecture to assemblages of rooms, from made of glass transparency to high-security buildings, from eco-sustainable concerns to deteriorated spaces. As a result, we witness, on the one hand, the trivialization of buildings, with the predominance of an undifferentiated practice of architecture, while many courts, especially in civil cases, are set up in office or residential buildings. There is, at the same time, a decline in the infrastructures and in the status of conservation of many courthouse buildings. The trend of banalization of the buildings adds to the dismissal of decoration and imagery, the devaluation of the interior finishing, given that noble materials, such as stone and wood, are rejected for economic reasons, a trend connected to the softness of rituals and the informality of procedures. These processes are closely related to the application of a managerial rationality, which requires low-cost solutions, linked to the demands of performance, productivity and functionality, which also result in rental/leasing options and/or the re-use of different types of buildings, instead of building new courthouses. These principles of an administration of justice that is required to be efficient are also visible in the dematerialization of justice, which changes the experience and the pace of the trial and procedures and has been challenging the traditional idea of the courtroom (see Linda Mulcahy's and Laurence Dumolin's researches on these topical issues). The leasing option means, in turn, the need to seek for new locations, with a tendency to set up new courts in urban areas away from the urban center. We also witness the rise of the idea of transparency, through the abundant use of glass on the façades of courthouse buildings - an idea

a globalizing market for courthouse architecture, have also to be taken into account (Resnik and Curtis 2011). Hence, courthouses are a product and a result of the circumstances of time, the historical, political, economic, legal, social and cultural contexts, as well as legal tradition and the place of jurisdiction (Branco 2015).

According to Robert Jacob (1994), architecture is an essential component of the Justice's image: from the symbolism of its architecture(s), and what we associate to it as the representation of Justice, Justice establishes a certain distance with respect to its citizens. The materiality of the spaces of justice contributes to the organization of the concrete legal life of social actors (Spaulding 2012). The courthouses' buildings are, thus, spaces whose architectures are intended for those who practice them daily: the professionals, who work there on a day-to-day basis; the users who, in one way or another, have to go there and take care of their affaires; but also the passers-by who, in the city, intersect with and meet these buildings (Branco and Dumoulin 2014). The intersection between architecture and legal practice results in the experience of Law and Justice, to the extent that architecture provides not only a space for the operation of Law, but also because it permits a vision of legal and judicial practices (Scheppele 2012). In contrast to a conception of neutrality, it is therefore possible to claim that the structure of a courthouse, the configuration of its walls and rooms, its location in the city and even the choice of materials used, as well as the courtroom and the height of the bench, are crucial to understand the activity of judging (Mulcahy 2007). Hence, the concept of due process of law is itself intimately bound up with the location, design, and use of law's administrative space (Spaulding 2012).

Nevertheless, one of the most overlooked topics in terms of thinking about the Law and the legal system has been the question of courthouse architecture, in particular how the courthouse building became a symbol of new ideas regarding justice and citizenship, the spatial separation of the participants in court procedures and the role of law in society (Mulcahy 2008). We can thus evoke the theory of the sociology of absences by Santos (2002): if we consider that this lack of reflection is associated with a logic of a rational monoculturalism of knowledge, in this case, knowledge associated with legal doctrine, that transformed the issue of courthouse architecture in a 'non-existence'. Thus, it is imperative that we let the question emerge from its lethargy, placing it within an active debate on how space and architecture shape the relationships between Justice and the justiciables, by communicating messages to its users, affecting their perceptions regarding the ways in which they live and understand Justice.

If we understand, as Manderson(2005) claims, that "how and what law means is influenced by where it means" we can then ask some questions: what kind of Law and Justice is communicated by a glass-made building that aims to be an urban and architectural icon? Or an old and deteriorated building? And a building that looks like a bricolage/assemblage of rooms? Or a bureaucratic space, full of computers and screens, tells us what? Or a banal space that resembles a supermarket, or something else? And the dematerialization of justice gives rise to what kind of space? Still, such considerations are not made consciously, since the accessibility of the Law or the quality of Justice are always taken into account considering legislative reforms, the cost of justice, delays in decisions, judicial productivity, among other elements.

In this article, I will start by presenting the different architectural profiles that characterize the courthouse buildings in Portugal. I will then examine what I believe are the three structural functions of the courthouses' buildings as spaces of Justice.

---

fiercely contested (see Marrani (2013), for example) - which is in tension with an even more pressing concern, that of the securitization of courthouses, requiring precautions in terms of the admission and circulation of people inside the building. Finally, a growing concern with the sustainability and ergonomics of the buildings, with adequate ventilation, natural light and green spaces for the hundreds of people that daily use these buildings (Branco 2015).

Firstly, the question of recognition or identification of these buildings as courthouses; secondly, the issue of their functionality; and finally, the subject of space at the service of access to Law and Justice. I conclude by considering that access to Law and Justice is a human right that requires access to dignified spaces of justice, that are able to promote participation in a civic Justice, which meets the needs arising from the material competence of different jurisdictions, the procedural moments of the court cases and the requests posed by court-professionals and court-users.

### 1.1. Methodology

My research is based on a methodological triangulation, combining quantitative and qualitative methodologies. I used different instruments: a. photographic report, with field diary; b. focus-group and interviews with architects and decision makers in what concerns the construction/adaptation of courthouses; and with judges, public prosecutors, judicial clerks, and court users, to gather their opinions regarding the Portuguese courthouses, as well as their personal and professional experiences in such spaces, especially considering the question of access to justice; c. documents, reports and statistics analysis; d. two online surveys (one directed at judicial clerks<sup>3</sup> in order to obtain the general characterization of courts of first instance – generic competence and family and children<sup>4</sup>; and the other directed at judges and prosecutors<sup>5</sup> to obtain their opinion and evaluations/representations on the subject of the Portuguese courthouse architecture); and finally, e. non participant observation in some family and children courthouses (which was the specific objective of my research).

## 2. A Portuguese profile

Portugal presents some singularities regarding courthouse architecture. It is even possible to speculate if in Portugal there was a courthouse architecture before the dictatorship period (New State), in the 20<sup>th</sup> century (Nunes 2003): in fact, the period of construction of courthouses is not coincident with the French, north-American or British periods, whose onset occurred much earlier, in the 19<sup>th</sup> century. Until then, Portugal faced a singular courthouse architecture, regardless of architectural trends or legal and political reforms: the tradition of polyvalent infrastructures where administrative and judicial functions coexisted, known as Casas da Câmara (Nunes 2003).

Therefore, it was only with the dictatorship that a recognizable courthouse architecture emerged, with the creation of a comprehensive program for building

<sup>3</sup> Note that the universe of the survey applied to court clerks comprised a total of 161 courts: 23 Family and Juvenile Courts and 138 courts of general jurisdiction, that had too jurisdiction in Family and Juvenile matters. A total of 110 valid surveys were obtained, which corresponds to a response rate of 70%. Of the total valid questionnaires, 94 were courts of general jurisdiction; and 16 were Family and Juvenile Courts. As for the geographical distribution of the respondent courts, despite having had responses from across the country, including the autonomous regions, there was a greater weight of responses from the central and northern regions of the country (39.1% and 32.7%, respectively). Both surveys were conducted between September and December 2010, by online administration, using the LimeSurvey software. I would like to thank the support and help given by Paula Casaleiro.

<sup>4</sup> As a specific objective, the case study focused on the Portuguese Family and Juvenile Courts. Family Law nowadays has to respond to new problems, manifested between a trend towards privatization/negotiation and a tendency to (re) publicity, particularly in terms of old and new familial relationships and children's rights. Hence, emerged the need to analyze the spaces of justice in an area so rich and complex, in which the interaction with the judicial system is associated with private life, fragility and emotion, not only because of the type of case involved (divorce, parental responsibilities, juvenile delinquency, neglected children, among others), but also the relationship with the buildings where this Justice takes place.

<sup>5</sup> Regarding this survey, I got a total of 60 valid responses. Since the universe was composed of 1587 subjects, the response rate was very low, of about 4%. However, resistance to this type of instrument from the legal practitioners is known (as the report from the ASJP showed, in 2007), thus the results obtained serve, at least, as an exploratory approach to the issue, which was complemented with the interviews and panel discussion.

courthouses. Being aware of the importance of architecture to set up a network of public infrastructures that would take the *New State* throughout the national territory, the various ministers of justice and of public works set up technical committees to conceptualize, design and build courthouses. Such committees, which combined architecture, sculpture, painting or tapestry, were composed of professionals curious of what was happening abroad, eager of transmitting the pedagogical role of architecture, from which benefited the political program of the dictatorship (Moniz 2005). This program has had a great impact on the image people have of how a Portuguese courthouse building façade and internal organization are supposed to be. Moreover, since the buildings constructed during the dictatorship are still active and in use, they continue to mark the Portuguese social, professional and symbolic representations of how a courthouse building should be.

Nowadays, and as said, the Portuguese courthouses have multiple and/or varied architectural profiles, which can be classified in terms of the coexistence of different architectural styles from different (political and temporal) periods. We thus have buildings whose model is recognizable and was inherited from the dictatorship period, and, at the same time, we also have buildings, constructed during the democratic period (from 1974 onwards), whose model can be characterized as heterogeneous. An analysis of the variables related to the year of construction of the building and the year of installation of the court reveals two prominent active periods of construction and installation of courts: the period between the 1960s and early 1970s; and the period referring to the 1990s, especially the last few years of that decade. Therefore, and until the beginning of the 1970s (during the period of the *New State*), the number of constructed and inaugurated courthouses was substantial, which was later interrupted in the period after the Democratic Revolution (1974), returning to a new rise during the 1990s. This rise in constructions/installation of courthouse buildings coincided with an increase in litigation, a specialization of justice and with the consequent need to find new spaces to the courts created by legislation. It is also important to notice the reduced number of purposely-built court buildings after 2004, which coincides with the onset of the economic crisis, but is also connected to a new policy regarding the planning and management of the judiciary infrastructures, based on a leasing policy and the re-use of buildings. Consequently, the panoramic picture of the Portuguese courts' buildings reveals the predominance of relatively old buildings, built purposely to be courthouses, belonging to the Ministry of Justice (i.e., public buildings) and which are normally located in the city center. However, this panoramic picture hides some specificities, resulting either from the evolution of public policies concerning courthouse buildings, procedural reforms, architectural trends as well as the material competence of that particular jurisdiction (Branco *et al.* 2011).

Secondly, and with regard to the dichotomy purposely-built or adaptation/re-use of a building to function as a courthouse, there are significant differences between courts with specialized jurisdiction and general jurisdiction: most courts with general jurisdiction are based in purposely-built buildings, while courts with specialized jurisdiction are mostly installed in adapted buildings. The buildings typology, mostly residential or commercial; the use of different materials in the facades (especially glass); and the absence of an iconography related to justice, results in an invisibility of these buildings within the urban fabric. Portuguese purposely-built courthouses, especially during the period between the 1960s and the early 1970s, have, generally, imposing facades; were built using noble materials, such as stone and marble; and have sober décors. On the other hand, courts presenting decorative images on the façade either show sculptures, bas-reliefs and/or rows of columns.

Thirdly, the different courthouse buildings tend to evolve towards: the exit from the urban centers towards the periphery; the hybridization of buildings; the use of low-

cost materials; and the vanishing of (external and internal) decoration, as well as the functionalization of the internal spaces. Although most courts are still located in the urban centers, it is possible to observe that over the years the location of the courts in urban areas has changed. Hence, most courts that we find located in the central zone of the cities was built between 1950 and 1974, while courts based in the outskirts of the urban area were all built or installed after 1995.

In what regards the courthouses that have glass as the prime material used in the façade, these buildings have had a substantial rise after 1975. Regarding internal decoration, we notice that this is a feature that has disappeared from courthouse buildings. Today this type of decoration has been replaced by white walls, where informative posters are affixed, by television screens, and by vending machines. Finally, in terms of the external architecture, buildings are characterized, from the 1990s onwards, as heterogeneous, which is counterbalanced by the homogeneity of the buildings' internal organization, since corridors, waiting areas and courtrooms are still configured according to the design standards inherited from the dictatorship period. Furthermore, it is uncommon to find decorative images inside the courtrooms, especially in the more recent courthouses.

### **3. The dimensions of recognition, functionality and accessibility<sup>6</sup>**

The purpose of the research I conducted (Branco 2013) was to examine the spaces of the courthouses in Portugal, by analyzing the different tensions they incorporate. My initial question was as follows: to what extent is access to law and justice conditioned (limited or enhanced) by the external (building types) and internal (interior organization, considering accessibilities and infrastructures) architecture of courthouses? Will courts permit more or less access to justice if the (internal and external) architecture of its buildings is more or less solemn and / or formal, more or less functional, more or less recognizable?

In this section, I will deal, firstly, with the issue of the recognition and identification of the buildings and spaces as courthouses. Secondly, with the issue of functionality, considering courthouses as spaces that meet more than the function of conflict resolution, so the aspects related to the infrastructures and accessibilities, safety and ergonomics will be taken into account. And finally, the issue of space at the service of access to law and justice, where I will address the influence that the architectural aspect has regarding the feeling of justice and the behavior of users, as well as the issue of geographical access to and location of the courts.

#### *3.1. The recognition dimension*

The liaison between a universal concept of justice (understood as an ideal and absolute right), and the practice or application of justice (linked to the judicial system and materializing through the trial), emphasizes the central role architecture plays. In two ways: by conferring legitimacy and solemnity to the hearing, and by situating the event (procedure and sentencing) and its consequences in space (Simon *et al.* 2013). It follows that the legitimacy of judicial proceedings does not derive only from the procedural rules and rituals, but also from the space where this process takes place.

<sup>6</sup> The construction of these analytical dimensions was operationalized through the survey directed at judges and prosecutors, asking them to indicate, firstly, and in order of importance, what were the aspects that should be taken into account in the construction and / or adaptation of a courthouse building. The vast majority of the magistrates indicated, at the outset, functionality and efficiency (76.7%); then 68.3% of the magistrates indicated the representation of Justice; and finally, 61.7% of the magistrates pointed out the service to the public. Looking at the combined responses, we find that most magistrates, specifically 56.7%, placed firstly functionality and efficiency, followed by service to the public and, finally, the representation of justice.

There are those who understand that the standardization of a particular architectural type for the spatialization of justice, one which can be immediately identified and recognized, implies that the rendering of justice will always be identical, thus conferring to it a superior level of legitimacy and ensuring legal certainty (Simon *et al.* 2013). Actually, when we imagine a courthouse building, there is a tendency to think of a public building with a certain configuration, shape and architectural style, conveying a sense of power, importance, or severity. According to Mengin (2011), and referring particularly to the American and French examples, both the French and the American Revolutions led to the birth of a democratic justice that prompted the need to implement an identifiable architectural type - the *Palais de Justice* or the Courthouse. In France, it was neoclassical in style, in the U.S. it had different forms, being the Supreme Court, and its Greek Revival style, one of the most emblematic. The format of the Greek temple was chosen not only as a representation of beauty, but also as a symbol of Reason and Wisdom. It thus conveyed a sense of Justice in the city, spatially translating the idea of the separation of powers (by its external architecture), allied to the idea of the rule of law (inside the courtroom), thus emphasizing judicial rhetoric (Badinter 1992). In Portugal, my homeland, this symbolical image is deeply tied to the type of courthouse building created during the Estado Novo (or New State), in the dictatorship period (as I said before).

Courthouse buildings, however, and as I have argued before, have gone through different phases and typologies. Most times, contemporary courthouse projects are often decided at the whim of budgets. At the same time, the uncertainty of the political form of democracy leads not only to the heterogeneity of buildings, but it also makes it difficult to physically represent the ideal of justice. Therefore, and according to Woodlock (2012), today we are witnessing the creation of "a series of boxes - some of them quite elegant, most not even, that are indistinguishable from other boxes with other activities and which do not have the drama, liturgy or civic purpose of a courthouse". As a result, the representations of justice are seen only as a technical issue, leaving behind the pedagogical role of courts, as political and social orders opened to different voices and creeds, disregarding the need citizens have of knowing how procedure and courts operate. As Marrani (2013) claims, new trends in the design of the palaces of justice affect the public's perception of the sites and spaces where justice is rendered. Therefore, the question of its recognition is not without controversy.

In this sense, I appreciated, firstly, the degree of importance assigned by judges and prosecutors to courthouse architecture, considering different aspects, such as buildings, rituals, procedures or decoration. Most of the interviewees agreed that courts' buildings must have symbolic characteristics that distinguish them from other buildings, and, above all, must convey a sense of power, of sovereignty. However, there is no simple and clear idea of how a courthouse building should be or look like in the 21<sup>st</sup> century, but there is an agreement that the building should communicate its function (that it is a courthouse), and thus should be identified or recognizable as a courthouse. Nevertheless, the human scale should serve as the starting point, which means that it must be a space capable of ensuring the protection of citizens' rights and freedoms.

Thus, both the courthouse and the courtroom were rated, by most respondents, as important, or very important, to the practice of justice, who also attributed some importance to rituals and professional garments (the gown). Above all, in the opinion of the respondents, the courthouse building must be easily identifiable and recognizable as a sovereign body<sup>7</sup>, as a public building that is part of community life. Thus, the vast majority of respondents (judges and prosecutors) insisted that the court building cannot be seen as a space designed at the whim of the artistic

<sup>7</sup> The excerpt of an interview with a judge on this point: "I believe courthouses should be known as such and should not be confused with other types of buildings where there's no administration of justice".

creativity of architects, but has to be recognized with the function it serves, that is, as the court. Consequently, a courthouse building should have an architectural style of its own, which would help distinguish it from the surrounding buildings. To do so, respondents also referred the need to recover and reaffirm the symbols of justice, along with the use of certain architectural compositions in order to convey the idea of a public building. Simultaneously, the court building must be adapted to the material competence: for example, as a family and juvenile court, since, as it was claimed, the identification and legibility of the building are the appropriate ways "to give content to the decision".

Regarding the courtroom, this space is considered fundamental to the practice of justice; thus, most judges believe that it cannot be any type of room but the traditional setting of the courtroom, considering that the judge should be (physically) in a higher level than the other participants should. Despite the importance of the courtroom, most judges considered that the administration of justice should not take place exclusively in the courtrooms. That is, this type of room should be reserved for those hearings that require a greater degree of formality or ceremony, or when the conflict is more manifest, referring to the impact that this room has on people's behavior and how it helps to clearly establish the role of each within the "heart" of the Court. There is therefore a consensus that it is important to have other spaces or hearing rooms more appropriate for different types of conflicts (such as mediation and conciliation rooms, with a different setting and different kind of furniture), different procedural moments and according to the diversity (and vulnerability) of the participants (adults of different ages or children).

### *3.2. The functionality dimension<sup>8</sup>*

To think of functionality involves, on the one hand, to consider the purpose for which the building was designed, or the function that it is expected to comply. In addition, and on the other hand, the quality that such building must be suited to serve as a particular purpose, which is supposed to be done in good conditions. With respect to the courthouse buildings, the feature of functionality concerns the function or purpose of being a courthouse and, moreover, that this function is fulfilled properly, given that the courts of justice are not meant to only serve the function of conflict resolution.

Therefore, courthouses must also be characterized as spaces of social conflicts and personal vulnerabilities, and as spaces of reproduction and/or compensation of inequalities. They are also civic spaces that mediate the individual with the community, and should thus be characterized as symbolic spaces of political, ideological and social representation. And as spaces of accessibility, and often also of inaccessibility. Courts are too spaces of legitimacy, both of the political and economic powers, as well as of legal culture and of the judiciary; and are consequently spaces of professional affirmation. But they are too workspaces, which implies looking at the tasks and activities sheltered by the built environment, seeking here to apply the principles regarding comfort and design, in order to make them better able to serve the functionality and the well-being of the legal professionals that work there. Moreover, and increasingly, they are too technology spaces, the impact of which is multifaceted, whether in terms of procedure or evidence, in terms of the working rhythms, or in the physical structure of the buildings. Being, after all, dependent on the current architectural trends, where architects are increasingly assuming a central role in the creation of new structural spatial forms (Branco 2015).

Regarding the infrastructures inside the courthouse, the respondents said that the main problem they had to face was, specifically, the lack or absence of courtrooms

<sup>8</sup> The functionality dimension had, in both survey, interviews and focus group, a big importance, since the vast majority of the respondents mentioned functionality (and performance) as the aspect to which they assigned a higher weight or meaning, as mentioned earlier.

or other hearing rooms. Consequently, and since the magistrates have to use venues different from the courtrooms, they rely primarily on the use of their working offices, mainly because there are no alternatives, since the magistrates agree that such spaces do not meet the most appropriate conditions for the conduction of the hearings. Hence, the magistrates consider that the offices do not communicate to the users that, although being in a setting different from the environment of the courtroom, they are still in the Court. This aspect is, consequently, seen as detrimental to the effectiveness of justice, for it is argued that the court-users do not recognize such spaces as the courthouse.

The magistrates also mentioned the absence of working offices, as well as of waiting or witnesses' rooms. The Court-users interviewed also mentioned the need of having waiting and witnesses' rooms to ensure the participants' privacy and security. They also mentioned the question of the very bad physical accessibilities.

Courthouses were also characterized as unsafe spaces. Security encompasses the normal course of procedures and hearings, the protection of people and the integrity of the assets and building (infrastructure). The issue of insecurity in the Portuguese courts is mostly referred by the magistrates, who complain about the lack of concern from the Ministry of Justice on this issue, namely the lack of police protection, given the conflict environment lived in these courts.

Thus, ensuring the functionality of a court building involves, firstly, the necessary working spaces and conditions for the judiciary, officials and the legal profession in general. Secondly, accessibilities (as ramps or elevators) and comfort/ergonomic conditions for court-users must be guaranteed. Thirdly, to guarantee the safety of the people, proceedings and building. As a result, most of the times it is the pro-activism of court professionals, which takes place ahead of the initiative of the decision-makers, that creates everyday spatial practices to deal with the problems posed<sup>9</sup>.

### *3.3. The dimension of access to justice*

Courthouse buildings may raise different feelings, some positive and some negative, which can overwhelm or relax those who enter and use them. The spatial configuration of both the courthouse and the courtroom can confer prestige or dignity to those who use them, but can also ruin their credibility. Courthouse architecture can associate the law with tradition and conservatism; or can symbolize a commitment towards change, innovation and democratic participation (Tait and Kennedy 1999). Dealing with the issue of access to Law and Justice in terms of courthouse architecture, one should bear in mind two latitudes: a symbolic one (which binds the functions of recognition and functionality) and a material one (which binds geographical and physical access).

Now, considering that courts are spaces of people and should also be seen as places of social and personal vulnerabilities, the respondents claimed that the architectural typology of the courthouse building influences the behavior of users, especially in what concerns the giving of testimony. Moreover, the configuration of the courtroom continues to install fear, thus not promoting the design that courts provide an essential public service – that of rendering justice.

As a result, the misrecognition of buildings, either by users or even by the professionals as the "Courthouse" is perceived as an obstacle to an effective access

<sup>9</sup> Here is an excerpt of an interview with a prosecutor who clearly stated this point: "I decided to put an end to this [lack of waiting room in a Family and Juvenile Court]. Meanwhile, one of our court officials had passed away, so I took her office, I put there some toys, books, chairs, and transformed it into a waiting room, where people can wait quietly. And that makes all the difference regarding the way people get to us afterwards [to give testimony]".

to justice<sup>10</sup>. The failure to recognize the buildings is also connected to the question of their location in the urban areas and the existing conditions of transport, capable of ensuring, or not, geographic access to courts. As well as the (in)existence and/or the (poor) quality of the existing accessibilities and infrastructures that these buildings provide.

The geographic location of the court at the local level is, therefore, of the utmost importance, whether regarding the socio-economic and urban planning impact that a court has in the urban agglomeration; or regarding the effect it has in terms of the citizens' access to the public service of Justice. Let us look at the Portuguese example: Portugal is undergoing a new organization of the judicial territory (see Lei n.º 62/2013, Lei da Organização do Sistema Judiciário<sup>11</sup>). Under this new organization, there was the reduction of the existent 39 jurisdictions into 23 (one for each municipal district), as well as the closure of 20 courthouses; as well as the setting of a network of judicial services composed of central and local instances, and the creation of 27 judicial extensions<sup>12</sup>. The aim is that of rationalizing judicial means<sup>13</sup>, in order to end having courts sunken in caseload, while others, as was claimed, have almost nothing to do<sup>14</sup>.

Now the questions arise: where are the courts that were closed located? Most of them were situated in the interior part of the country, where nearly all basic public services have already been removed, such as schools and health facilities. According to the Ministry<sup>15</sup>, and contrary to the critics of said reform (mayors, magistrates and court officials), the new judiciary's organization will take justice to the interior parts of the country, albeit in a different form. Nevertheless, by shutting down these courts, the Ministry is «commanding» that citizens will have to file their cases in courts situated more than 30, 40 or 50 km away from where they live. Consider the distance and add transportation or the lack of it; the lack of financial resources; the lack of other institutional mechanisms for conflict resolution, different from courts (such as mediation or conciliation), to provide access to legal information and conflict resolution. Consequently, the lack of effective access to law and justice is thus a lack of participation, transparency and accountability.

---

<sup>10</sup> Here is an excerpt of an interview with a judge who clearly stated this point: "On the first day, when I came here to take office, it was a desperation to find the courthouse. First of all, I was not familiar with the city. When I arrived I asked: "Where is the court?". "It's up there." I got 'up there' and saw a garage. "Where's the Courthouse?". "It's there." Meanwhile I was looking, looking and did not see any courthouse. I got to the corner and asked a grocery: "Where is the Family Court?" "Ah, you've been there. It's right there beside the kiosk." When I got to the kiosk, I saw a Polyclinic. I turned back and went to the Bank: "Where is the courthouse?" "It's above the clinic. You have to enter through that door." Well, I hadn't associated the door to the courthouse, and I am not exactly an illiterate, I have a higher level of training. If for me, used to traveling, it was difficult to find the courthouse, for most people it will certainly be harder".

<sup>11</sup> For more information, please consult <http://www.portugal.gov.pt/media/1408592/20140502%20mj%20ref%20org%20judiciaria%20mapa.pdf> (last accessed June 2015)

<sup>12</sup> The Central Instances were divided into Civil Section, Criminal Section, and the said Specialized Sections, whilst the Local Instances, of general jurisdiction, will have authority to act on urgent matters regarding criminal procedure and children. As for the Judicial Extensions, these are intended to become an integral part of the Judicial Court. As the name implies, they are supposed to be an extension of the court office, assured by bailiffs, operating on the premises of the existing courthouses, with full access to all information of the district, and where citizens and lawyers can consult any ongoing processes, as well as deliver pleadings or applications; witnesses can be heard via videoconference.

<sup>13</sup> As Resnik *et al.* (2013) argue, this reform serves its purpose well: to remind us of courts' dependency on other branches of government, especially the executive, which authorize budgets and shape jurisdictional authority. And in the Portuguese case, this goes beyond the national political conception: it is also a result of the austerity measures imposed by the Troika – then again, a result of political supranational powers.

<sup>14</sup> The criteria used to advocate the closure of such courts was their low caseload: less than 250 files per year.

<sup>15</sup> At the time this article was written the Minister was Paula Teixeira da Cruz. The government has since then changed and the present Minister, Francisca Van Dunem, will introduce adjustments to the judicial organisation.

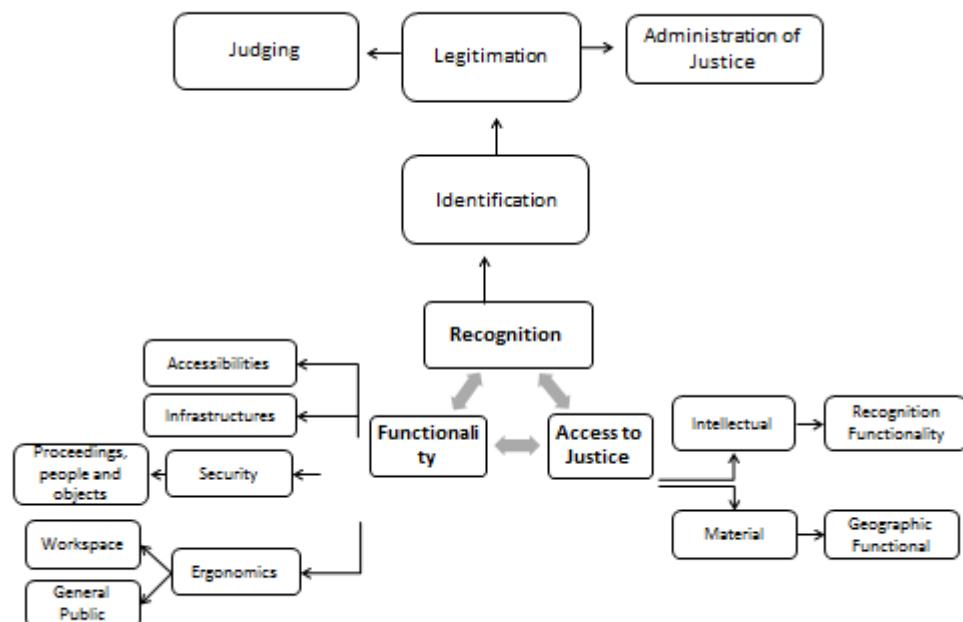
Moreover, the existing courthouses' buildings were not prepared for this new organization, since no new courthouses were built and the Ministry will only carry on some renovation works in some of the buildings. We are thus witnessing what might be called a "judicial slumisation", with courthouses located in containers, adjacent to the buildings of the existing courts, serving as temporary facilities.

#### 4. Concluding remarks

After centuries of monumentality, the image of justice is also changing, supported by new architectural experiments. Whether its spaces are established in ordinary administrative or bureaucratic buildings, or in more spectacular constructions, it moves towards bigger functionality. Consequently, the new contemporary courthouse is a major challenge for the 21<sup>st</sup> century. If those buildings respond to the need of durability, accessibility, visibility and security, on the other hand, they adopt an eclectic architectural design that completely unsettles all the traditional codes of the representation of justice (Bels 2013, Branco 2015).

It becomes clear that the three dimensions analyzed – recognition, functionality and access to justice - are interrelated and mutually influence each other. Nevertheless, we can also apprehend the tensions inherent to their relationship: if in the past (especially during the dictatorship and in the early Democratic periods) the political legitimacy of the courts was based in the mere recognition of these as a sovereign body, today this legitimacy also requires that the dimensions of functionality and access to justice be guaranteed.

Figure 1



Source: Branco (2015).

I argue, therefore, that a courthouse, as a space of justice, must be recognized and readable as such, to the extent that such recognition is also reflected in a potentiation of its functionality - ensuring, through its infrastructures and accessibilities, the safety and ergonomics of both professionals and users. Hence assuring a real and active access to justice, by guaranteeing accessible spaces, either by their geographic location; or by its good construction/adaptation and integration in the community. This, in a reverse relationship, enhances its

functionality and recognition as spaces that legitimize the administration of justice and, in this way, the proper rendering of justice.

Consequently, these functions must be considered, on their turn, in terms of a new model of access to law and justice, as follows: firstly, a cognitive-symbolic dimension; secondly, a functional-ergonomic dimension; and finally, a physical-ergonomic dimension. In the first dimension, we are talking about access to law and justice that is achieved through the immediate identification of a public building with judicial functions. The second dimension relates to the functional perception of the space of justice, designing such space in respect for the values of proximity, friendly functionality and ergonomics. Finally, the third dimension has to do with geographical (location) and physical (mobility aids) accessibility. Ideally, the adaptation and/or construction of courthouses, should:

1. Shape the building with the distinctive characteristics of a courthouse (guaranteeing the dignity of a court as a sovereignty body that purports to communicate the values of equity, democracy and citizenship), with an external architectural structure and symbolism that permits its immediate identification – what we call *the cognitive-symbolic dimension of access to law and justice*;
2. Estimate a set of rooms (courtrooms, hearing rooms for children, mediation/conciliation rooms, witnesses' rooms, ...). Estimate too working and waiting areas, with adequate and functional layouts (issues to be considered: materials, colours, size, furniture, decoration, comfort, ...), favouring a more relaxed environment (preferably foreseeing green areas and cafeterias) and understandable signage (graphics and signs) – what we call *the ergonomic-functional dimension of access to law and justice*;
3. Provide accessibility (geographical, transportation and mobility outside and inside the facilities) and functional circulations – what we call *the geo-physical dimension of access to law and justice*.

All these procedures and practices would allow, in my opinion, a greater and better access to justice. A real and trust worthy public service of justice, promoter of citizenship and of democracy must, therefore, ensure the existence of courthouses operating in buildings that are adapted and suitable for the different material competence of each jurisdiction, as well as to the procedural moment of the case. Ergonomic workspaces for judges and employees as well as for lawyers and other officials are also to be guaranteed. Buildings that are functional and safe. And also conditions of comfort that would provide a quieter environment for the users, especially given the kind of conflicts involved.

## References

- Badinter, R. 1992. Préface. In: Association Française pour L'Histoire de la Justice. *La Justice en ses temples. Regards sur l'architecture judiciaire en France*. Paris: Errance, 9-12.
- Bels, M., 2013. *Les grands projets de la justice française. Stratégies et réalisations architecturales du ministère de la Justice (1991-2001)*. Thesis (PhD). Université Paris-Est.
- Boulad-Ayoub, J. 2008. Les palais de justice de Montréal: du Temple à la Tour. In: N. Paquin, ed. *Les signes de la justice et de la loi dans les arts*. Québec: PUL, 51-74.
- Brando, P., 2013. *Os Tribunais como espaços de reconhecimento, de funcionalidade e de acesso à justiça - o estudo de caso dos Tribunais de Família e Menores em Portugal*. Thesis (PhD). University of Coimbra.
- Brando, P., 2015. *Os Tribunais como Espaços de Reconhecimento, de Funcionalidade e de Acesso à Justiça*. Porto: VidaEconómica.

- Branco, P., and Dumoulin, L., 2014. La justice en trois dimensions: représentations, architectures et rituels. *Droit et Société*, 87, 485-505.
- Branco, P., et al. 2011. Entre a forma e a função: arquitectura judiciária e acesso ao direito e à justiça nos tribunais com competência em família e menores. *LexFamiliae*, 15, 33-56.
- Tait, D., and Kennedy, L., 1999. *Court perspectives: architecture, psychology and law reform in Western Australia*. Western Australian Law Commission, 1017-1100.
- Commaille, J., 2013. O espaço da justiça como questão política entre necessidades e desafios – uma abordagem de sociologia política do direito. In: P. Branco, ed. *Sociologia do(s) Espaço(s) da Justiça: Diálogos Interdisciplinares*. Coimbra: CES/Almedina, 21-35.
- Jacob, R. 1994. *Images de la Justice*. Paris: Le Léopard d'Or.
- Madranges, É., 2011. *Les Palais de Justice de France*. Paris: LexisNexis.
- Manderson, D., 2005. Interstices: New Work on Legal Spaces. *Law Text Culture* [online], 9. Available from: <http://ro.uow.edu.au/ltc/vol9/iss1/1/> [Accessed 8 July 2016]
- Marrani, D., 2013. A evolução pós-moderna dos espaços da justiça: O uso e abuso da transparência. In: P. Branco, org. *Sociologia do(s) Espaço(s) da Justiça: Diálogos Interdisciplinares*. Coimbra: CES/Almedina, 65-87.
- McNamara, M. 2004. *From tavern to courthouse. Architecture & ritual in American Law, 1658-1860*. Baltimore, London: The John Hopkins University Press.
- Mengin, C., 2011. Deux siècles d'architecture judiciaire aux États-Unis et en France. In: J. Poumarède, org. *Territoires et lieux de justice*. Paris: La Documentation Française, 191-211.
- Moniz, G.Canto 2005. Arquitectos e Políticos. A arquitectura institucional em Portugal nos anos 30. *DC Papeles*, 14, 68-79.
- Mulcahy, L. 2007. Architects of justice: the politics of courtroom design. *Social and Legal Studies*, 16(3), 383-403.
- Mulcahy, L. 2008. Architectural precedent: the Manchester Assize Courts and monuments to law in the mid-Victorian era. *King's Law Journal*, 19(3), 525-550.
- Mulcahy, L., 2011. *Legal Architecture. Justice, due process and the place of law*. London: New York: Routledge.
- Nunes, A.M. 2003. *Espaços e imagens da justiça no Estado Novo. Templos da justiça e arte judiciária*. Coimbra: Edições Minerva.
- Resnik, J., and Curtis, D.E., 2011. *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms*. Yale University Press.
- Resnik, J., Curtis, D., and Tait, A., 2013. Constructing Courts: Architecture, the Ideology of Judging, and the Public Sphere. In: R. Sherwin and A. Wagner, eds. *Law, Culture & Visual Studies*. Dordrecht: Springer Science+Business Media, 515-545.
- Santos, B. de Sousa 2002. Para uma sociologia das ausências e uma sociologia das emergências. *Revista Crítica de Ciências Sociais*, 62, 237-280.
- Scheppelle, K.L., 2012. Judges as Architects. *Yale Journal of Law & the Humanities*, 24 (1), 345-396.

- Simon, J., Temple, N., and Tobe, R., 2013. Introduction. In: J. Simon, N. Temple e R. Tobe, eds. *Architecture and Justice. Judicial Meanings in the Public Realm*. Surrey: Ashgate, 1-6.
- Spaulding, N.W., 2012. The Enclosure of Justice. Courthouse Architecture, Due Process, and the Dead Metaphor of Trial. *Yale Journal of Law & the Humanities*, 24 (1), 101-133.
- Woodlock, D.P., 2012. Communities and the Courthouses They Deserve. And Vice Versa. *Yale Journal of Law & the Humanities*, 24 (1), 271-286.