

Considering a different model for the Family and Children Courthouse Building. Reflections on the Portuguese experience

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Abstract

Courthouse buildings do not usually play a significant role in most socio-legal research on law-and-courts; and where the courthouse buildings have been considered, authors often take for granted the need for a ritualized adjudicative process within a certain kind of building, usually a pompous and prominent one. My aim, nevertheless, is to discuss the law buildings, and their internal configuration, where the specialized jurisdiction of family and children justice is rendered, in Portugal. This article will thus consider the discrepancies between the *courthouses in books* and the *courthouses in action*, or how they are legally designed and concretely structured, and lived, by giving voice to court professionals (judges and prosecutors) and court users, pointing out the problems and needs they have identified, and the claims they make.

Key words

Family law and justice; courthouse buildings; architecture; Portugal

Resumen

Los palacios de justicia no suelen desempeñar un rol significativo en la mayor parte de las investigaciones sociojurídicas sobre el derecho y los juzgados; y allí donde esos edificios se han tomado en consideración, los autores han solido dar por hecho que existe la necesidad de un proceso adjudicativo ritualizado en un cierto tipo de edificio, normalmente uno pomposo y destacado. Mi objetivo, sin embargo, es reflexionar sobre los palacios de justicia donde se imparte la justicia de familia y sobre menores de edad en Portugal, y sobre su configuración interna. El artículo tomará en consideración las discrepancias entre los *palacios de justicia en los libros* y los *palacios de justicia en acción*, o cómo están diseñados jurídicamente y cómo se estructuran de forma concreta, y cómo son habitados, dando la palabra a profesionales del derecho (jueces y fiscales) y usuarios del juzgado, señalando los

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problemas o necesidades que han identificado y las reclamaciones que presentan al respecto.

Palabras clave

Derecho y justicia de familia; palacios de justicia; arquitectura; Portugal

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1. Introduction

To be effective, jurisdiction has to be inscribed in space (Goodrich 2008), geographically and architecturally. Despite that, the concept of a courthouse as a particular kind of building is a very recent invention (Mulcahy 2013). According to the Guidelines on the Organisation and Accessibility of Court Premises of the European Commission for the Efficiency of Justice (hereinafter, CEPEJ; 2014), particularly Guidelines no. 50 to no. 56, a courthouse is a building specifically for delivering justice. Thus, the courthouses' buildings, through their particular architectures and complex internal organisation,¹ provide not only a space for the operation of law and justice, but also define a scenery through which people can materially experience judicial authority (Goodrich 2008, Lucien 2010, Scheppele 2012). Courthouse architecture assigns legal discourse to a proper space, and hence creates a structure, a context, a special and symbolic place (the courthouse building, firstly, and the courtroom in it, secondly), where the theatricality and ceremonial of the trial and of the judicial procedure, and particularly judicial rituals, can occur and be performed without being disturbed by the external and ordinary management of daily life. Judicial buildings and judicial rituals are utterly entangled and it is this combination that concedes authority to the judicial institution and legitimacy to the judicial decision (Asma 1997, Brigham 2009, Gélinas *et al.* 2015).

Hence, according to Spaulding (2012) the concept of due process of law, with its rituals and procedures, is itself closely implicated in the location, design, and use of the law's buildings. And that becomes particularly important when we consider one special type of law and one special type of court: family law, and family and children courts. This is due to several reasons: firstly, family law is a special branch of law, with a precise technical and legal consistency (Marella and Marini 2014); and secondly, there is a particular interface between justice, space and court users in this legal field, where intimacy and authority play in an intricate interaction.² In fact, while responding to the children's needs and having to be family-sensitive, the courthouse facilities also have to communicate serious messages to abusive/neglectful parents and to juvenile offenders, as well as provide a comfortable and functional workplaces to court professionals and public areas to court users (Goltsman 1992, Branco 2015). Although in the last years more attention has been paid to the importance of customizing the court's spaces according to the specialization of this particular type of jurisdiction, in Portugal the standard continues to be the replication of a (roughly) unchanged architectural template, particularly in terms of the courtroom's layout, as well as the internal configuration of the courthouse building, more fit for other types of jurisdiction, especially the penal one. Nevertheless, such configuration is being highly contested, especially by court professionals (judges and prosecutors), particularly the lack of appropriate hearing rooms to conduct case conferences and hearings involving children. Eurico Serra, back in 1955, had already argued that "[a] Children's Court is not a specialized

¹ The development of courthouse architecture as a specialist field of expertise not only had a significant effect on the institutionalisation of law, but it also helped law professionals gain legitimacy (McNamara 2004). It started quite rudimentary and, little by little, developed into diverse architectural styles creating specialized and sophisticated typologies of courthouse buildings to attend to the evolution of procedural and substantive law rules. Courthouses are thus a particularly elaborate building (Clark 2009), requiring different sets of rooms, complex circulation systems – for judges, prosecutors, court officials, experts, parties, defendants (some of whom may be in custody), victims and witnesses (some of them quite vulnerable), and the general public; adequacy to the information and communication technologies; and they need to accommodate different social groups and different expectations. All of this informed by the current need for efficacy, rationalization and efficiency of resources (procedural, human, material and budgetary) brought by the new public management.

² In family and children courthouses the interaction with the judicial system is, hence, associated, most of the time, with private and intimate issues, fragility and emotion, with unhappy matters, given the type of cases under conflict - such as divorce, parental responsibilities and related adversarial issues around child support and visitation schemes; cases involving juvenile offending, and/or neglected/abused children. We need to pay attention to the fact that in these courts we are before different users, different addressees, because in such courts the regulation and solving of conflicts has to do with adults, with adults over children, and with children and teenagers (both as victims and offenders).

section of a criminal court" (Serra 1955).³ And sixty years later, I am making the same claims, particularly addressing the issue of these courts' settings.

Regrettably, though, court buildings do not play a significant role in most law-and-courts research; and where the courthouse buildings have been considered, authors often take for granted the need for a ritualized adjudicative process within a certain kind of building,⁴ usually an imposing one (Gélinas *et al.* 2015). And yet, to assess the judiciary's built environment is very important, for it reveals the social practices, the values and governing principles that maintain the judiciary (Bybee 2012). Based on research conducted in the family and children courthouses in Portugal,⁵ this text aims at filling that gap in literature, by exploring some relations between this specialized jurisdiction and the settings in which it takes place, at a time when the judicial institution faces functional requirements imposed by a reform agenda taking place in terms of the reconfiguration of the judicial map, in a context of budgetary constraints.

My aim, hence, is to discuss the buildings and the spaces where family and children justice is rendered, in Portugal. To consider the buildings, and their spatial organization, means first of all to place this specialized jurisdiction within a network of legislation, that characterizes the territorial organization, the material competence (jurisdiction), and some functional aspects to take into account regarding the buildings and hearing rooms (settings). This will be section 2 of the article, where I will consider legislation and soft law documents and guidelines (1. at the supranational and 2. at the national – Portuguese – levels) and what they recommend regarding the (family and children) courthouse settings – what I call *courthouses in books*.⁶ Then, in section 3, I will consider the *courthouses in action*, meaning the actual buildings and settings, and particularly how they are evaluated by judges, prosecutors and users (interviewed during field work), pointing out the problems and needs they have identified, and the claims they make.

2. Courthouses in books

Alice had never been to a court of justice before, but she had read about them in books, and she was quite pleased to find that she knew the name of nearly everything there. 'That's the judge', she said to herself, 'because of his great wig'. (Lewis Carroll, *Alice's Adventures in Wonderland*)

³ It was in 1970 that the Portuguese Family Courts were legally created (at first, there were only two, one Family Court in Lisbon and another in Oporto). In 1977, after the democratic revolution (1974), children courts (Tribunais de Menores) were created as well. But it was only in 1987 that specialised courts with jurisdiction in the field of family and children justice (Tribunais de Família e Menores) were settled. Between the 1990s and 2014 there were several periods of installation, some more prolific than others (Pedroso *et al.* 2010). With the current reform of the Judiciary Organization (judicial map), operated by Lei No. 62/2013, and recently altered by Act no. 40-A/2016, the specialization of family and children jurisdiction, and its geographical extension, were promoted. However, the created family and children divisions (52 specialised sections) do not yet cover the entire national territory, leaving that competence to the local divisions of general jurisdiction (in 30 localities).

⁴ Authors usually turn to iconic buildings, such as the United States Supreme Court (Resnik and Curtis 2011, Wardle 2017), the Parisian Palais de Justice (Fischer Taylor 1993) or the Royal Courts of Justice in London (Brownlee 1984, Wardle 2017), on the one hand; or the Criminal Assizes, a particular type of English court (Mulcahy 2011), on the other hand. So, it is either a symbolic building and/or related to criminal law.

⁵ Called "Juízos de Família e Menores" (Act no. 40-A/2016). According to Acts no. 40-A/2016 (Organização do Sistema Judiciário), no. 166/99 (Lei Tutelar Educativa) and no. 147/99 (Lei de Proteção de crianças e jovens em perigo), in Portugal Family and Children Courts are competent to resolve matters related to spouses and ex-spouses (e.g. matters regarding divorce and alimony, familial patrimony, inventories); maternity and paternity investigations; adoption; parental responsibilities (e.g. child support, visitation schemes and child custody); children in danger/risk (e.g. promotion of children's rights related to parental negligence, child prostitution, child abuse – from 0 to 18 years of age); and juvenile delinquency (children and youngsters between 12 and 16 years of age who have committed actions that would be punished as crime offenses under the penal code).

⁶ Hence paraphrasing Pound's (1910) distinction between "law in books" and "law in action".

As Alice, I have read about the courts of justice in books, that is, in rules and documents. It is, thus, fundamental to understand what these legislation and documents state, that is, what recommendations or values must be taken into consideration in terms of the spatial and architectural arrangements in family and children courts' settings, in particular courtrooms and other hearing rooms, and/or formalisms involved. I will start with the supranational level, mainly the guidelines adopted by the Committee of Ministers of the Council of Europe, the European Commission for the Efficiency of Justice (CEPEJ) and the European Union Agency for Fundamental Rights (1); and then get to the national level, that is the procedural rules concerning the Portuguese Family and Children justice (2).

2.1. Supranational overview

The Committee of Ministers of the Council of Europe (hereinafter, COE), of which Portugal is a member-state, adopted, in 2010, a series of guidelines on child-friendly justice. As stated by De Boer-Buquicchio in the foreword, many children come into contact with the justice system and for many it is an unpleasant experience. There is a general mistrust in the system, and one of the obstacles pointed out has precisely to do with the inappropriate settings in which justice takes place (COE 2010, 7).

Therefore, the Council of Europe, via its Committee of Ministers, calls for a child-friendly system of justice, in pursuit of the fundamental right addressed by the United Nations, in its Convention on the Rights of the Child, regarding the treatment of children in judicial proceedings. It is advocated that judicial buildings or facilities should be adjusted to the needs of children/young people, in particular the hearing/interviewing and waiting rooms (child-sensitive settings), so that children/young people feel at ease and secure and thus can freely express their opinion, in accordance with the principle of participation and, ultimately, the best interest of the child. The guidelines also recommend that before the proceedings or hearings the children become familiarised with the layout of the court and the roles and identities of the professionals involved (so they can know, like Alice did, "the name of nearly everything there").

The European Union Agency for Fundamental Rights (hereinafter, FRA), in the context of the European Union's Agenda for the Rights of the Child, conducted a research – Child-friendly Justice-Perspectives and Experiences of Professionals – corroborating that children's involvement in judicial proceedings can be stressful, for children may become traumatized if the procedures are not child-friendly, the *settings unsuitable* and the professionals involved inadequately trained (FRA 2015, 1) [emphasis added]. As regards the courthouses' settings, FRA argues that concrete measures, such as preventing a child from directly confronting defendants or witnesses in court or ensuring that the child is informed about and understands the proceedings, are not yet common practice. FRA thus recommends that EU Member States guarantee that child-friendly rooms (waiting, interviewing and hearing rooms) are available in the courts' facilities (either in penal or civil proceedings), and that such rooms are equipped to address the needs of different age groups (FRA 2015, 5). Furthermore, courts should be equipped with separate entrances, to protect the child from meeting the alleged perpetrator or a family member in conflict with the child, and to safeguard the child from a harsh environment while waiting to be heard. Courthouses, and other locations where children are heard, should be equipped too with functioning recording technology, and professionals should be trained to use it (FRA 2015, 11).

In 2014 the CEPEJ adopted its Guidelines on the Organization and Accessibility of Court Premises. According to these guidelines, and particularly guideline no. 125, "in certain countries, a 'justice of cabinet' is emerging, for instance in family disputes. Processing these cases requires that parties be met in a place allowing to preserve the intimate character of the subject which is being dealt with. Offices, small hearing or meeting rooms for this type of 'justice of cabinet' could be set up in areas which should be different from the office of a judge" (CEPEJ 2014).

In brief, all these guidelines suggest that the justice systems, principally the settings in which justice operates (especially the waiting, interviewing and hearing rooms) should be more child-friendly and family-sensitive, thus enhancing children's meaningful participation in the judicial proceedings, preserving the intimate nature of family disputes and, at the same time, improving the operation of justice.

2.2. Portuguese overview

I now get to the domestic level, and suggest we go back to 1911. This look at the past is important, for sometimes it is by looking at the past that we may better reflect on the present and the future.

When the first Portuguese child protection law was promulgated in 1911 (*Lei de Protecção à Infância*), the organization of a judicial system of protection of children and young people was implemented, and the first Children Courts (*Tutorias da Infância*) were created. Interestingly, these *Tutorias* were set as a type different from the criminal court. In fact, the *Tutorias* proposed a layout for the organization of space and an informality of procedural ritual different from that used in the traditional law courts. It is remarkable to notice that at that time the legislature paid a lot of attention to certain details involving the space and formalism in these courts. Thus, in accordance with paragraph 3 of article 92 of this Decree, the trials involving children should "be carried out in a private room"; except in the situations at the level of the municipal courts where, if there wasn't a dedicated room, the trials would take place in the courtroom, "but at different times of the other trials". This regulation was further specified with a Decree from 1925 (*Decreto no. 10767*), where Article 39 said that "the trials of children in the *tutorias* would take place, as much as possible, without the solemnity of the hearings of the ordinary courts, in a room specially designed for this purpose; moreover, "the child, as a rule, should not attend the trial and should be heard separately, without the formalities of the public hearing". However this paradigm was never integrally adopted in the court's architecture (Nunes 2013).

During the dictatorship period, this sensitivity to issues of spatial arrangements faded. But the post-revolution period saw the review of several laws in the area of family and children, with legal changes of great importance, both in terms of the Civil Code and juvenile law. Under the *Organização Tutelar de Menores* (Children's Guardianship Organization, Act no. 314/78) there was again a concern about the proceedings and formalities involving children: in accordance to Article 54, it was established that the hearing of children "would take place in the judge's office".

In 2001 two law decrees changed, substantially and significantly, the legal framework for children and young people: the Law for the Promotion and Protection of children at risk and the Educational Guardianship Law (*Lei no. 147/99, Promoção e Protecção das Crianças em Perigo*; and *Lei no. 166/99, Lei Tutelar Educativa*, respectively), thus abrogating the previous legislation. If, as regards the Promotion and Protection Act, there are no rules concerning the spatial arrangements (although one of the guiding principles is, in accordance with Article 4, that of Privacy), in the Educational Guardianship Act it is necessary to mention two specific rules, which are articles 45 and 96. Article 45 stipulates that "[t]he participation of children in the proceedings, even under detention or custody, is made so that he/she feels free in his/her person and with a minimum of constraint". In turn, Article 96, which refers specifically to the hearing room and professional dress, says that "the judge may determine that the preliminary hearing shall take place outside the court premises, taking into account the nature and gravity of the facts and the age, personality and physical and psychological conditions of the child". And "judges, lawyers and court officials wear the robe in the preliminary hearing, unless the court, on its own initiative or upon request, considers that is not advised by the nature or seriousness of the facts, the personality of the child or for the purpose of the guardianship intervention".

Recently, Act No. 141/2015, which approved the Regime Geral do Processo Tutelar Cível (General Regime of Civil Guardianship Proceedings), states in Article 5 concerning the child's hearing, that such proceeding must respect his/her specific condition, assuring, in any case, the existence of suitable conditions for such hearing, particularly that "the child is not to be subjected to a space that is intimidatory,⁷ hostile or inappropriate to his/her age, maturity and personal characteristics" (in accordance with the COE guidelines previously mentioned). Paragraph 7 of this article reinforces the meaning and scope of the child's hearing held in an informal and private environment/setting, to ensure the spontaneity and sincerity of the answers. However, the legislature is vague, and does not indicate how a court should be configured so that its environment is not intimidating, but is instead child-friendly and appropriate.

It is thus noticeable that there is a certain care in attenuating the uneasiness resulting from the contact with the walls/rooms of the courthouse, either by using a room different from the courtroom, or by not wearing the robe. However, it is important to notice that the legal Acts from 1911 and 1925 were much more specific than those more recent ones.

Subsequently, the questions arise: how do family and children courthouses look in Portugal? In what kind of buildings do they function? What are their real settings? Do they provide the types of rooms suggested in the law? The next section will deal with these issues.

3. Courthouses in action

As regards the Portuguese courthouses, it is important to start by saying there is a distinction between generic and specialized jurisdiction, although since 2014 the division done is a little different – the courts are now divided into sections of central (where the more complex cases are handled) and local instance (the latter are divided in sections of general, civil and criminal competence). The distinction here used – general and specialized – has to do with the fact that in courts of general competence we usually find an all-purpose building, in the sense that all types of cases are tried in that same building, whereas we may have a specific-purpose building just for family justice.

Secondly, the courthouses in use were built/adapted during two distinct periods of time: the dictatorship period (mainly built between the 1950s and the 1970s) and the democratic period (after 1974). 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 with a new policy regarding the planning and management of the judiciary infrastructures, based on a leasing policy and the re-use of other types of buildings. Consequently, the panoramic picture of the Portuguese courts' buildings reveals the predominance of relatively old buildings (nearly 56% of the courts were built before 1985, which means they have now more than 30 years of use), built purposely to be courthouses (nearly 73% of the buildings), belonging to the Ministry of Justice (i.e., 95% are public buildings) and which are normally located in the city centre (Branco *et al.* 2011).

The courts of *general jurisdiction*, on the one hand, are mostly installed in purposely-built edifices, located in a central area of the urban agglomeration (about 88% of the courthouses), and that were mainly built during the dictatorship period. Generally speaking, the façades of these buildings are imposing, and noble materials, such as marble or granite, were used in the construction.

⁷ It is the wording of the law, by using the expression *intimidatório*. As Tait and Kennedy (1998) assert, courthouse buildings may raise different feelings, some positive and some negative, which can overwhelm or relax those who enter and use them. Thus intimidatory is here related to a stressful environment or setting.

The family and children courts, as courts of *specialized competence*, on the other hand, are mostly installed in buildings adapted to function as courthouses (nearly 75% of these courts), and, unlike the courts of general jurisdiction, low-cost materials were predominantly used. The buildings typology, mostly residential or business-like; the use of different materials in the façades (especially glass); and the absence of an iconography related to justice, results in an invisibility of these buildings within the urban fabric.⁸ A second group of specialized family and children courts is integrated in facilities which were purposely built as courthouses, but where they occupy one of the court's floors, thus sharing the building with other jurisdictions (civil, criminal, labour, or other). Finally, and since family justice is also rendered in courts of general jurisdiction (in the local divisions of general jurisdiction),⁹ it is important to mention that many of these buildings have become dysfunctional in terms of the allocated space for facilities associated with specific proceedings within family and children justice.

As Rowden (2015) has critically assessed, reading courthouses for their external architecture (and symbols) alone might, however, mask the way justice interiors may or may not facilitate critical principles of justice, and particularly access to justice. It is hence important to analyse the interior arrangement of the Portuguese family and children courthouses, what I will do in the next sections, by giving voice to the professionals and users interviewed.

3.1. *Evaluating the buildings: giving voice to the professionals and the users*

3.1.1. Methodological remarks

Prior to this evaluation, some methodological notes are necessary. The fieldwork I conducted, between October of 2010 and October of 2011,¹⁰ combined quantitative and qualitative methodologies.¹¹ I conducted a total of 27 interviews (with six judges, four prosecutors, three attorneys, and six users; six with public bodies, representing the Ministry of Justice, and two architects). The non-exhaustive number of interviews is related to the following factors: firstly, this was an exploratory research topic, which intended to consider, in particular, Family and Children Courts from another perspective, that of architecture and the spatial arrangement of the buildings; secondly, the combination of methodologies used allowed me to obtain a varied and complex set of perceptions and opinions, and to build an informed picture of the issues under analysis. All interviews (which were recorded and later transcribed) were conducted upon a semi-structured thematic guide, which varied slightly according to the institution and/or type of interviewee (professional or non-professional); and had a duration that varied between 30 minutes and nearly two hours. The analysis of all

⁸ 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; and such misrecognition of the buildings, either by the users or even by the professionals as being the Courthouse is perceived as an obstacle to an effective access to justice (Branco 2016).

⁹ See footnote 3.

¹⁰ Although six years have passed, the reality has not changed much. In the post-doctoral research I am currently doing, titled *Courts, communities and citizens: the effectiveness in (territorial, spatial and symbolic) access to justice of the new reform of the judiciary*, which concerns the recent reorganization of the judiciary's services, I have recently interviewed (already in 2017) judges and prosecutors who continue to make the same remarks I will present in this section. It is important to notice as well that the financial crisis that affected the country since 2011 has served as an obstacle in terms of public investment in the judiciary's facilities.

¹¹ As well as the analysis of relevant bibliography, documents, reports and statistics. The following instruments were used: a) A photographic report, with field diary, of 35 courts (21 Specialised Family and Children Courts; and 14 Courts of General Competence); b) a focus-group and interviews with architects and decision makers (regarding the construction/adaptation of courthouses); as well as with judges, public prosecutors, judicial clerks, and court users (opinions plus their personal and professional experiences in such spaces, especially considering the question of access to justice); c) two online surveys, 1. one directed at judicial clerks in order to obtain the general characterization of courts of first instance – generic and specialised competence; and 2. the other directed at judges and prosecutors to obtain their opinions and evaluations/representations on Portuguese courthouse architecture); and finally, d) non participant observation in some family and children courthouses (the specific objective of my research).

the interviews was elaborated in a double logic: firstly evaluating each interview individually and then analyzing all interviews by comparing research topics: general tendencies/evolution in the construction/adaptation/installation of court buildings; evaluation of the courts in use; maintenance costs of court buildings; professional or personal experience; views on ideal courts; and connections between architecture, justice, law and access to justice.

For the purposes of this text, I have only selected excerpts from the interviews conducted with judges and prosecutors (court professionals); and users.

3.2. Giving voice to the court professionals and the users

Generally speaking, the assessment made by both court professionals and users of the adequacy of the buildings and hearing rooms of the courts in the family jurisdiction is rather negative. This inadequacy is the result of three main elements: firstly, the rigidity of the courtroom layout; secondly, the need for other types of hearing rooms; and thirdly, the need of having a specialized building for a specialized jurisdiction. These courts' spaces and buildings are thus characterized as inadequate settings because they do not respond to the differentiated interventions and logics imposed by the different proceedings (especially concerning civil guardianship, children at risk or juvenile offending).

3.2.1. Contesting the rigidity of the courtroom

The courtroom is a readily identifiable spatial structure, with deep historical and cultural resonance¹² (Spaulding 2012), that reinforces hierarchical systems of law, power and social order (Anthony and Grant 2016). It is a recognized ensemble of people and judicial apparatus in a particular place, intended to promote an understanding of the law as authoritative, legitimate, and confrontational (Philippopoulos-Mihalopoulos 2016). But this highly determined, conventional and rigid setting of the courtroom is being contested, especially as the appropriate location where to hold hearings diverse from those in the criminal jurisdiction, as in family hearings and case conferences involving children, as is the case under analysis. Which implies it is losing ground to other forms of conflict resolution, more mediation-like.

The visual features of courtrooms have a role in conveying values that underlie (and may, or may not, legitimize) the justice system (Gélinas *et al.* 2015). As it has been argued, design now plays a more prominent part in controlling the movement and behaviour of participants in the trial/hearings in ways which can impact on their ability to participate in it (Rowden and Jones 2015). Accordingly, the court professionals (the judges and the prosecutors) I have interviewed declared the inadequacy of the courtrooms as the appropriate setting where to hold (most of) family hearings and/or case conferences, particularly when involving children. The question of the solemnity of such spaces, and mainly their spatial arrangement, was also felt and mentioned by the users interviewed, especially in a negative sense (as *scary* places), who claimed, therefore, that the courtroom should be adapted to the diverse users entering a family and children's court, especially the children. As the excerpts expose:

¹² Papke (1999) has rightly pointed out that the courtroom trial is also a pop cultural convention: "and what a courtroom it tends to be!" As the author wrote: "Instead of the peeling paint, plastic chairs, and bright fluorescent lighting so common in contemporary urban courtrooms, the pop cultural courtroom is customarily wood-paneled, well-upholstered, and soothed in soft light from ornamental lamps attached halfway up the walls. In the background huge wooden doors stand ready to swing open and shut for dramatic entries and exits. Local and national flags and also stern-faced men in uniform fill out the scene. The judge's bench stands like an altar at the exact center-front and rises above, suggesting something higher and truer." (Papke 1999, 921) Still, as Papke (1999) has well noticed, there is lack of correspondence with what is experienced in actual courtrooms, exactly as in the Portuguese case under analysis.

... it is scary. For me it's scary because I have no experience (...). Because it was not a crime that was being judged, it was a divorce! (User 1)

[It should be] more friendly, different. It's disturbing to us [adults], and to a child, I think it must be even worse. We don't feel comfortable, for a child it's worse (...). It was a situation where there was no need to go to the courtroom, I would say. Because I believe that child custody is one issue where we have to reach an agreement regarding what is best for the child. (User 2)

I think we should have a different structure. This layout is typically criminal. And therefore, if we believe in what the law says, we're not doing the same thing as in a criminal trial. This is something that can and should be translated in the way the room is set up (...). There are some things that have to be maintained – some separation of the public from the parties... even for security reasons. But I think there are specificities that justify a different configuration of the courtroom. (Prosecutor 2)

However, some of the judges interviewed considered that the traditional courtroom's layout is important as it conveys an imposing meaning, which may have a beneficial impact in the parties involved in more problematical cases, thus reinforcing the perceived links between solemnity and the authoritative role played by the law:

The hearings that are most significant, quantitatively speaking, are in fact case conferences. The trials correspond to that phase in which neither the agreements nor the therapies that have been implemented resulted. So, if nothing else was successful, authority must be enforced, and therefore, I think the traditional courtroom fulfils this function. (Judge 2)

Hence, even if not all the judges interviewed agreed about the courtroom having a different configuration, they voiced they would prefer to have the hearings in a different venue:

Family cases are, foremost, of voluntary jurisdiction. In voluntary jurisdiction the basic principle is that we do not have great formalities and can do what we deem appropriate to achieve the desired result. I consider it appropriate to have the case conferences outside the courtroom. The courtroom itself does not need to be adapted for family hearings. What we need is a more intimate, peaceful space, with a large table, where parties can all be side by side or face to face. (Judge 2)

What comes out is the need for "a more intimate space", a room with a simpler symbolism and scaled-down architecture, especially in terms of furniture and bench configuration, which is asked primarily regarding the courtroom, but is deemed as really necessary in terms of other hearing rooms.

3.2.2. The need for different kinds of hearing rooms

One of the problems mentioned in the interviews by the court professionals has to do, specifically, with the lack of hearing rooms for diverse kinds of proceedings and case conferences, different from the courtrooms, as resulted from the previous subsection. Furthermore, these different hearing rooms – mainly conciliation rooms, as well as rooms for interviewing children, considered as indispensable by judges and prosecutors – should be more intimate and should not replicate the structure of the courtroom, as said. Some excerpts give us that account:

Of course the facilities should be designed according to the functionalities planned to be implemented (...) [in the] family [court] there should be (...) a hearing room with a structure different from a courtroom – the conferences should be made with the parties on the same level, that's why they are conferences and not trials – and there must be a specific room for this. (Judge 3)

[We need to have a] conciliation room. The ideal would be a room with a round table with chairs, where the magistrate could sit down with the parties. If we are trying to manage the conflict, then the ideal is to bring people closer together and bring the magistrate closer to the people. For me, a room as simple as possible, in this attempt to congregate. (Prosecutor 3)

Some of the judges and prosecutors interviewed also mentioned the importance of having rooms for interviewing children,¹³ to preserve the intimacy of the proceedings involving them – a necessity, moreover, stated in the legislation and referenced guidelines.

Regarding family and children courts I think it is essential for the child to have a space just for her (...). I think these spaces are in fact essential to break down barriers between the child and who is trying to get some information from her in order to help her. When we're dealing with that state superstructure, represented by lawyers and judges wearing the robe in the courtroom, [it is different] because in the conciliation room we are not formally dressed, it's a more informal setting. (Prosecutor2)

If I'm with a three or four year old (...). I've had situations where I had to go to the courtroom because I only had the recording system in the courtroom. What happened then? I took off the robe, and I placed a table in the middle of the courtroom (I used the court official's desk). I structured the room [differently] and everyone sat down there with the child. We tried to create the best possible environment within the conditions we were given. But in that case I did not use the courtroom as a courtroom. I used the courtroom because it was the only room available, but if I had another room, where I could do that (...). If I had the children's room, with toys and games, I'd hear the child in that room. And at the same time I would be playing with her. (Judge3)

Consequently, what happens, on a day-to-day basis, is that judges and prosecutors (and court clerks) seek to address the lack of appropriate spaces for the different hearings and users of the family courts by adapting the existing rooms, thus creating everyday spatial practices that try to supply the deficiencies of the buildings, their settings and accessibility. As a result, and most of the times, the pro-activism of the judicial professionals takes place ahead of the initiative of the entities responsible for the construction/adaptation of courthouse buildings.¹⁴

3.2.3. A specialised building for a specialised jurisdiction

As I said earlier, in Portugal family and children justice operates between the general and the specialized jurisdiction, be it because the specialized sections occupy one of the courthouse's floors, be it because the resolution of family and children conflicts is imparted to the sections of local general competence. When asked about these matters, several judges claimed that it would be advantageous, in substantive, procedural and practical terms, to have specialized buildings, purposely built/adapted for the resolution of family and children conflicts.

These are situations – a case regarding parental responsibilities and child custody, for example – that have to do with people's emotions. And to be near a gang member who is being tried for a crime (...). They are confined to the same space, and the feeling is that they are encompassed in the same kind of treatment. In practice, we try not to let it happen. But I think it would be an advantage if these situations were not dealt together [in the same building]. The specialization of the buildings, the physical separation of these different cases, would be helpful. (Judge6)

¹³ As well as family visiting areas for children who have been removed from their homes or are involved in complicated custody cases, and where they can visit their parents and/or relatives. Regarding the rooms for accommodating children, and where hearings can be done, some courts already have such spaces. The problems have to do, sometimes, with the fact that these rooms do not always have the adequate material conditions or the human resources needed, which leads to these being of limited use, or not used at all.

¹⁴ Thus, it would be crucial to create commissions composed of the professionals working inside the judicial system (magistrates and clerks, as well as attorneys, and also social workers), more skilled to understand and evaluate the needs implied and to exchange ideas with the public entities (Ministry of Justice and architects) responsible for the construction/adaptation/renovation and installation of courthouses. And, of course, court users should also have a say in this process (by using surveys or, at least, taking into consideration their complaints). For example, in Australia, architecture researchers have collaborated with Indigenous nations to develop design principles that better accommodate Indigenous principles regarding the use of space in the courthouse (Anthony and Grant 2016).

Furthermore, such buildings should have an architectural design different from the iconic courthouses we are familiar with,¹⁵ providing a relaxed environment that could ease the emotive nature of the conflicts and foster the resolution of the disputes through an agreement¹⁶ (just as the CEPEJ guidelines highlight).

In this case, architecture could help in favouring a more relaxed design, to avoid a stigmatizing effect. It could be a sort of mini 'cité judiciaire', where you could even have, for example, a snack bar, a small catering plaza, an esplanade, a café, where people could wait before the hearings. It could have a garden, a mini lake. (Judge 1)

This statement clearly accentuates what has been demonstrated in an extensive literature that has emerged since the 1950s: the influence environmental design has on human comportment, feelings of comfort and wellbeing (Rowden and Jones 2015).

3.3. Identifying problems: the link between comfort and due process of law

The court professionals and users interviewed considered the present courts to be unpleasant spaces in terms of comfort (lack of waiting rooms) and working conditions (offices).

An office is not a place to have the hearings. In here I have my personal tokens, family photos, and I have a right to have them, of course. I have personal things. For the people [attending the hearings] this is a cold space, with books, case files, it's an office (...) it's not the ideal space. (Judge 3)

And this, as was multiple times claimed by most of the judges interviewed, poses several problems, first of all the physical proximity between people who are in conflict (especially in cases of divorce, where domestic violence may be an issue; or in cases regarding the regulation of parental responsibilities and child-custody cases), which may be a risk for one of the parties, witnesses, as well as for the professional involved.

... [in the offices] people end up being on top of each other. And when there is some animosity involved [it becomes a problem] (...) people are too close while in there... and often there isn't even a place to sit in. (Judge 2)

Secondly, the lack of appropriate settings and furniture. A dignified setting may be taken not only as a signal that the participant is being treated respectfully, but also that he/she is willing to respect the rule of law, symbolized by the court and the judge, and thus comply with the decision or agreement reached (Chase and Thong 2012). As Garapon (2013) claims, when one looks at the decoration of an office, one finds most times a personal identifier of its occupant (a photograph or a poster, for example), which is inconceivable in a public space. Thus, the judge's robe and insignia, still seen as emblematic of the judicial process, are in this sense "social signs" that add to the dignity of the location and promote the recognition of that space as a judicial setting (Chase and Thong 2012).

In addition, court professionals and users alike complained about the lack of comfort and privacy, especially in the waiting areas, where they have to wait for long periods of time.

The courts (...) are uncomfortable and not very functional [spaces]. (User 3)

¹⁵ For Garapon (1997), the court building, its symbols and rituals, contribute to the institution of the judge's authority, understood as the capacity to shape – in material, symbolic and intellectual terms – the public decision. The seemingly old-fashioned symbols are the key to modernity, he claims. Nevertheless, and as Arrieta (2014) argues, Garapon seems to assume that rituals and symbols are something always positive (a guarantee of rights), but he fails to acknowledge that these contexts often constitute an obstacle to participation in the hearings, may be a cause for secondary victimization, and ultimately preclude the user's access to justice.

¹⁶ An interesting parallel is to be made with the prison environment, and what is currently happening in the Netherlands in terms of creating a humanized environment inside the prison buildings. In Norderhaven, for example, the building has a park full of trees and picnic tables where the detainees can walk freely. As the prison director explained, being in the open-air helps to foster the desire to collaborate, which may help explain the really low numbers of detainees in the Netherlands's prisons. See Traldi 2017.

... we do not have the adequate physical conditions (...). I don't know of any Family Court which has physical conditions to ensure the privacy and intimacy of individuals, and people feel uncomfortable, obviously. (Prosecutor 4)

Which leads to a distressful environment, that, as one of the prosecutors interviewed mentioned, likely exerts influence on how people will then behave during the hearings:

And that makes all the difference in the way people come up to us afterwards. Because if people are stressed, are inadequately and poorly seated, that is clearly going to influence their behaviour [during the hearing]. (Prosecutor 1)

As suggested by Chase and Thong (2012), it is possible to hypothesize that a participant – especially if not a repeat player – will feel disrespected and reluctant to trust the judge if the court in which he/she is heard does not measure up to expectations [many times based on iconic images presented in American prime-time television, Hollywood movies, and popular fiction (Papke 1999)] – which, I argue, is comparable if such places are felt and perceived as uncomfortable, given their material conditions.

4. Final remarks

When citizens enter a courthouse building, they often feel they have stepped into an unknown world (CEPEJ 2014). Furthermore, the physical architecture and environment of a Family and Children Courthouse can either demonstrate a sensitivity to the needs of the children and the parents, the ex-spouses, the youngsters, the witnesses, or add enormously to the ordeal which a court experience can represent (Goltsman 1992). Hence, being asked to speak to strangers (like judges and experts) about traumatizing events while sitting in furniture not made for their proportions (it is often what happens when children are involved in court hearings); or waiting to enter the hearing in a hallway bustling with activity, or having to wait a long time for their cases to be called, sometimes in close proximity with a violent partner/spouse or alleged abusers, adding to an uncomfortable environment, can be painful and distressing (Ngwa-Suh 2006, Carmo 2014). What we find, most times, is a detachment between the sensitivity of the issues handled and the rigidity and unfriendliness of the courts' spaces (and rituals).

Nevertheless, the modernization of the judiciary, with the implementation of public policies to improve the accountability and the quality of justice,¹⁷ as well as a new vision of the role children should play in judicial proceedings (guidelines on a child-friendly justice), have also had a strong impact on the architecture of the courts, with some positive effects in terms of the family justice settings. In fact, in the last years more attention has been paid to some amenities that can alleviate the burdens described above. Thus, some courthouses dealing with family conflicts are now equipped with rooms for accommodating children, as well as with hearing rooms different from the courtroom (especially for mediation and conciliation proceedings, and case conferences). On the other hand, the dematerialization of justice has also provided some measures concerning evidence-giving via video conference, especially when vulnerable parties and witnesses are involved.¹⁸

¹⁷ Thus, one of today's trends is an architectural design which seeks to be less grandiose and more welcoming for the public, with buildings providing easy access to court users. This may be an indication of the way the very concept of justice has evolved (CEPEJ 2014), in the ambit of a broader change of the social structures. According to the CEPEJ's Guidelines, it is essential that plans to construct or renovate courthouse facilities are designed in order to provide a high-quality justice, which means that the expectations of the users have to be taken into account. As Commaille (2013) points out, taking such expectations into account should lead to the definition of new forms of courthouse architecture and law buildings that promote a new political project in which citizens can fully participate, thus enhancing the legitimacy of dispute resolution (Gélinas *et al.* 2015).

¹⁸ This issue, however, is not without controversy. There is a great need for an in-depth investigation of how current designs of remote spaces may be deficient, particularly in terms of how the remote participant

One of the points I want to highlight, nevertheless, has to do with the gap between the courts in books and the courts in action. As the analysis of the legal texts made revealed, there is a certain deficiency of rules concerning the judicial settings, especially when dealing with issues related to adults, that is, in cases of voluntary jurisdiction (such as in cases of divorce). When it comes to issues involving children and young people, there is a greater concern in regulating the courthouse settings. Nonetheless, one thing is to legally create a courthouse, another one is to specify how it should be or look like (building), and another one yet concerns its actual settings. As demonstrated by the Portuguese reality. Although my research was conducted in Portugal, and the claims made are intended mainly for the Portuguese context, many of these claims could be applied in other European countries as well – as argued by the European Union Agency for Fundamental Rights (2015).

From the excerpts presented throughout the above sections emerges, first of all, a different conceptual idea regarding the design of the hearing rooms in the family and children courthouses. The professionals pointed out, firstly, the need to have a courtroom with a different layout. Secondly, that there should be, in addition to the courtroom, conciliation rooms and rooms for children to be interviewed. Finally, there is the suggestion of an in-between model: the existence of several flexible rooms, with a design and furniture that could be changed in order to adapt to the different hearings and conferences, hence creating multiple hearing settings, sometimes more intimate, other times more authoritative, according to the needs imposed by the aforementioned logics of intervention taking place in such courthouses.

When this research was conducted, there were 11 (specialised) courts provided with rooms for hearing children, and 11 courts with mediation/conciliation rooms. However, it is important to note that such rooms: (1) may have been created by the professionals, and were thus informally assembled; (2) even if they have been formally structured, they may not be prepared to be used because there aren't the needed material conditions or available officials. This means that courts function on an uneven standard, whereas there should be a functional design that ought to be implemented throughout the country.

A second key-point is that of the building as a whole. Not only are we in need of having a different internal organization, but also a new type of courthouse building, with a new design and responsive configuration, offering the participants (professionals and users) a more ergonomic and relaxed environment.¹⁹

Setting a new judicial organization could be one appropriate moment to do such an examination, especially since one of the goals was to extend the specialized jurisdiction of family justice to the whole Portuguese territory. Actually, and if it is true that the reform of the judicial map created more specialized sections, we also have to consider their physical installation. No new courts were constructed. Incidentally, one of the major criticisms of this reform was, among other things, the insufficiency and inadequacy of the courts' buildings in order to support a new configuration of the judicial services [Ordem dos Advogados (Portuguese Bar Association) 2015]. We continue, therefore, to have the same law buildings, and unchanged internal arrangements. Certainly, in some cases improvements have been made, by settling new rooms for accommodating children in courts where this structure did not exist previously. But other courts continue to suffer from the scarcity of spaces and the lack of specialized hearing and waiting rooms. And in other cases, the Ministry of Justice announced that, in some localities, while building the new palace of justice containers will be used to install the Family and Children Section (as in Beja) [Correia 2017], which can be detrimental to the operation of justice.

is presented to the court, what sorts of behaviours they provoke in participants, and how they might be improved. See Rowden 2013.

¹⁹ Much could be learned from the Australian experience regarding the development of courthouses for Indigenous users (Anthony and Grant 2016).

As Gélinas and colleagues (2015) rightly claim, thinking about the future of civil justice, and, in the case, family and children justice, raises a number of questions regarding how procedure ought to look and which values it ought to promote, which means considering the courthouse buildings too. Thus, to consider courthouse buildings has the potential to help law-and-courts scholars broaden their understanding of the different forms the judicial process may take (Bybee 2012). It is important to assess if court design has the capacity to embody new conceptions of public space and judicial power (Anthony and Grant 2016) capable of responding to the new social contexts in which courthouses operate, and thus promote an effective access to justice.²⁰

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²⁰ Anthony and Grant (2016) rightly claim that the court environment itself cannot guarantee these objectives because we have to consider court procedures, language, costs and outcomes as well. But since courts are active and living places, the use it is done of this places affects the user's judicial experience in terms of respect and human dignity.

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