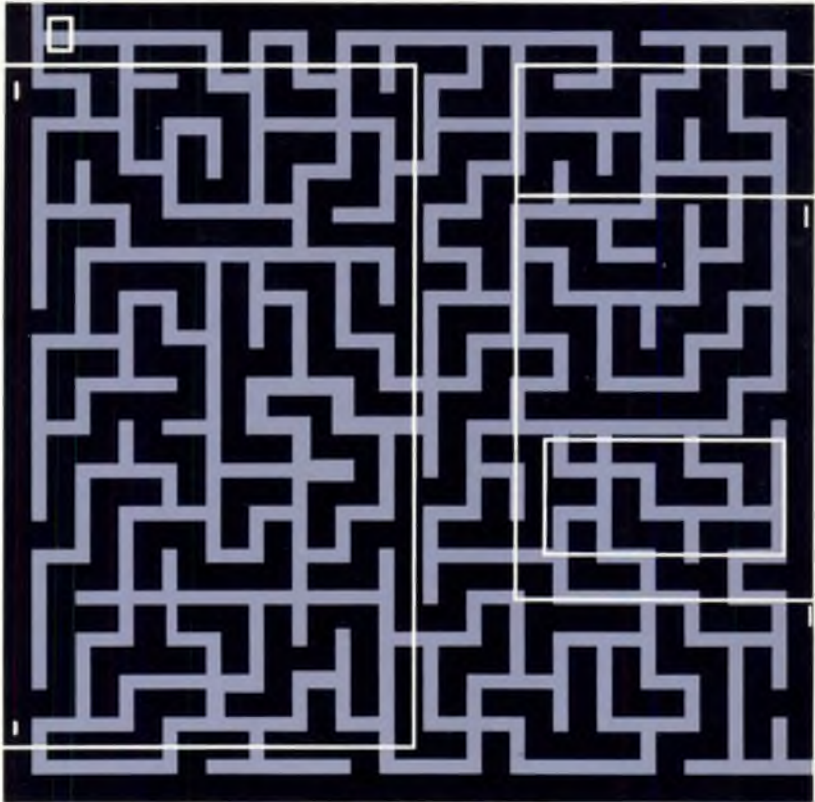


JON BING

**THE PORTUGUESE INFOJUR
PROJECT AND RELATED ISSUES
NORIS (96) III**



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PUBLIC MANAGEMENT PROGRAMME

Consultant's Report

Portugal

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Mission: May 21-26, 1990

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1. Introduction

In a letter of April 6, 1990 from the OECD's Public Management Service (PUMA), the Norwegian Research Center for Computers and Law was asked to undertake a mission to Portugal, in co-operation with Portuguese authorities. The objectives were stated to be:

- "(i) to present and discuss with representatives of the I.I.¹ plus some other institutions concerned, including the Office of Planning of the Ministry of Justice ... the issue of the scope and areas of juridical information to be processed. This should of course be done according to the specific markets and taking into account the technical constraints of the system. Special emphasis should be given to the organisation of the collection, processing, updating and diffusion of information, (in particular the issue of easy access by public and private users).
- (ii) more generally, to present and propose elements of solutions, concerning the institutional framework, the informatic architecture and the software, which have already had some success in overcoming implementation difficulties also encountered in other countries, in this type of project."

The project was incorporated in the research and development program for legal technology - NORIS - at the Norwegian Research Center for Computers and Law as project no (96), sub-project III.

The mission was carried out May 21-26, 1990.

The Instituto de informática provided me with office space, and organized my stay. Apart from representatives of the Instituto de informática and the INFOJUR project organization, meetings were organized with the following institutions:

Presidência do Conselho de Ministros
Divisão de documentação of the Presidência do Conselho de Ministros

1. The Instituto de informática.

Gabinete de Documentação e Direito Comparado da Procuradoria-
Geral da República
Secretariado para a Modernização Administrativa
Centro de Estudos Técnicos e Apoio Legislativo

During the period, a "Conferência sobre informática jurídica" was organized by the Instituto de informática, where several Portuguese experts presented their views, and where I also was invited to give my tentative conclusions from the visit.

This report summarizes some of the impressions from the all too brief stay in Portugal. It should be emphasized that the complexity of the situation certainly has made the author present views which are inappropriately simplified, which include misunderstandings or omissions. Such shortcomings are wholly the responsibility of the author, while the gracious Portuguese host should be credited with what they have been able to communicate to the author in a brief period of time.

Hoping that all the friendly and helpful persons I met during the stay will excuse my mentioning finally Dr Luis Vidigal, who took well care of me during the stay and used much of his own valuable time to explain me the Portuguese situation, and Dr José Manuel Santos Pais of the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral, with whom I was pleased to renew old relations.

As annexes, a paper by dr França Martins and a paper by dr Luis Vidigal are included with the gracious permission of their authors.

I would also like to thank my associate at the Norwegian Research Center of Computers and Law, Mr Pedro Alcântara, for his help and assistance in preparing this report, including the translation of the Portuguese papers included..

Smestad, July-October 1990

Jon Bing

2. Legislation: From initiative to publication

2.1 Introduction: The final stages of the legislative process

This report will be concerned with the legal communication processes and information systems of Portugal. As it is based on a brief visit and a small selection of material, the author is quite conscious of the probability of misunderstandings, inadequate explanations and omissions. This may be especially true for this introductory part, which presume some knowledge of the constitutional law and legislative system of Portugal.²

According to the Constitution³ art 170(1), power to initiate legislation lies

"1. Power to initiate legislation and to propose referenda shall lie with the Members, the parliamentary groups and the Government; with respect to the autonomous regions, power to initiate legislation shall lie with their respective regional legislative assemblies."

When the initiative is with the government, it has to be submitted by a minister.⁴ The proposal is at this time registered at the Presidência do Conselho de Ministros,⁵ and assigned a unique reference number which will identify the proposal until its publication in the *Diário da República*. The proposal should be accompanied by additional material, including a synthesis

-
2. To some extent, this is rectified by the inclusion in the annex of Martins' discussion of the final stages of the legislative process.
 3. Citations are based on *Constitution of the Portuguese republic, Second revision 1989*, Directorate-General of Diffusion, Lisbon 1990.
 4. Cf Martins "How laws are made", Instituto nacional de administração 1987 part III.
 5. The Portuguese names for institutions *etc* will be used when known to the author, otherwise English translations will be used.

of its content, identification of existing legislation affected by its approval and an informative abstract for publication through mass media.

The proposal is circulated for comments, and then tabled for the Conselho de Ministros. A decision is here made by consensus or voting, and may be one of three alternatives. Under the government of 1987⁶ the relative numbers of decisions are as cited below:

Approved	73.5 per cent
Postponed	23.0 per cent
Rejected ("retirada")	3.5 per cent

The Presidência do Conselho de Ministros then communicates the appropriate decisions to the appropriate addressees for further processing, including to the Parliament. For those legal instruments not communicated to the Parliament, the counter signature of the President is necessary. The President may make one of three decisions with respect to the legal instruments received:

- Signature and promulgation
- Veto of the legal instrument
- Communication of the instrument to the Constitutional Court for an evaluation with respect to the constitution

Following its promulgation, the legal instrument is then communicated to the Presidência do Conselho de Ministros, which is responsible for the publication in the *Diário da República*.

This is the brief background necessary to discuss the legal communication processes and information systems, of which the *Diário da República* is the first major element. The brief sketch may imply that the Portuguese legislative system is somewhat more complex than corresponding systems in many other jurisdictions. The brief discussion above does not adequately reflect the complexities, but should be sufficient to identify the different stages in the process for the purposes of this paper.

6. Cf Martins 1987 part V.

2.2 CETAL: Centro de Estudos Técnicos e Apoio Legislativo

As mentioned above, the proposed legal instruments are examined with respect to possible relevance for other legal instruments in force. Proposed amendments to the legislation are communicated to the CETAL, which is part of the organization of the Presidência do Conselho de Ministros.

This specialized agency researches proposals, and is responsible for review and revision activities. In assessing the possible impact on existing legislation, the agency is rather dependent upon the Divisão de documentação of the Presidência do Conselho de Ministros, as it has no information system of its own for retrieval of possible relevant documents.

In this way, the CETAL emerges as one of the major users of the files maintained by the Divisão de documentação. Its role as the central review and revision agency within the jurisdiction should be appreciated. The activities of the CETAL should ensure consistency in the legal source material. It is rather obvious that the quality achieved to a large extent will be determined by the information system at the disposal of the CETAL, and that in this perspective, an improvement of information services may be justified even if only the CETAL achieves better availability: This will in turn result in an improvement in the consistency within the system.

2.3 Diplomas: A legislative information system

One should make brief mention of a legislative information system employed by the Presidência do Conselho de Ministros, known as Diplomas.⁷ As mentioned above, the proposal for a new legal instrument is conveyed to the Presidência do Conselho de Ministros, which plays a central and coordinating role throughout the final stages of the legislative process, and assign a unique identifier to the proposal - a pre-publication tracing number. This identifier is associated with an entry in Diplomas, which also include abstracts (based on the summaries included in the proposal). The information is mainly collected by the Presidência do Conselho de Ministros.

7. The name is derived from a Portuguese term meaning "legal instrument".

The system has been developed in the fourth generation Unisys language MAPPER, and is made available on-line to the Instituto de informática.

The material is not available to the public until publication, as there is no prevailing freedom of information principle in Portuguese public law. This makes full integration between Diplomas and INFOJUR (discussed in some detail below) difficult at this stage. It was, however, pointed out that freedom of information legislation currently was considered by the Parliament.⁸

2.4 *Diário da república*

2.4.1 *First series*

As mentioned above, the legal instruments to be published in the first series of the *Diário da República* are communicated to the Presidência do Conselho de Ministros, which organizes the material for printing and forwards this to the government printing office, the Imprensa Nacional.

The *Diário da República* is published daily in three series. It has a wide circulation, probably relatively higher than similar legal gazettes.

The *Diário da República* is established by art 122 of the Constitution:

"

Article 122

Publication of decisions

- I. The following shall be published in the official journal, the *Diário da República*:
 - a. constitutional laws;
 - b. international conventions, notifications of ratifications thereof and other notifications concerning them;
 - c. laws, decree-laws and regional legislative decrees;
 - d. resolutions of the Assembly of the Republic and the Regional Assemblies of the Azores and Madeira;
 - f. rules of procedure of the Assembly of the Republic, the Council of State and the Regional Assemblies of the Azores and Madeira;
 - g. rulings of the Constitutional Court and rulings of other courts which are made binding to all by law;

8. Projectos-Lei 33/V, 65/V, 467/V, 468/V, 497/V. These legal instruments are under consideration by a Parliament Commission.

- h. regulative decrees and other decrees and regulations of the Government, decrees of the Ministers of the Republic for the autonomous regions and regional regulative decrees;
- i. results of national-wide elections and referenda.
- 2. ...
- 3. ..."

One will appreciate that this article imposes the system of *Lex Gambetta* on the Portuguese jurisdiction. A legal instrument falling within the specified categories will not be valid - *ie* cannot be cited as an authority for action against citizens - until the publication has taken place.

The article is further implemented by Act of July 29, 1983 (Lei n.º 6/83) "Publicação, identificação e formulário dos diplomas" as amended by decree-laws of October 21, 1987 (Decreto-Lei n.º 336/87) and April 8, 1988 (Decreto-Lei n.º 113/88). In its art 3, the law specifies which types of legal instruments have to be published in the first series of the *Diário da República*, in some more detail than the Constitution. In art 8 is specified the categories of legal instruments which is to be imposed after January 1, 1983:⁹

- "a) Leis constitucionais;
- b) Leis;
- c) Decretos-leis;
- d) Decretos legislativos regionais;
- e) Decretos;
- f) Resoluções;
- g) Decretos regulamentares;
- h) Decretos regulamentares regionais;
- i) Resoluções do Conselho de Ministros;
- j) Portarias;¹⁰
- l) Despachos normativos."

Again, one will appreciate that the structure imposed on legal instruments is somewhat more complex than the simple division in statutes, regulations and instructions, which is common in many other jurisdictions.

9. In interviews, it has been pointed out that this categorizing has been rather stable since the creation of the Republic in 1910.

10. Item "k" is not included in the list due to the simple reason that the Portuguese alphabet does not include the letters "k", "w" and "y".

Lei n.º 6/83 art 7(1) states that all legal instruments published in the first series of the *Diário da República* should have a unique identification number composed of the number and the date of publication.

It flows from the principle of *Lex Gambetta* that it may be a matter of urgency to publish a legal instrument in order for the instrument to come into force. The practical problems in post-editing, type-setting, proof-reading *etc* make it impossible to publish the legal instrument in the *Diário da República* the same day it is received, the normal time lag is 5 days, which is seen as "a serious constraint to the political and legal efficiency of measures which require almost immediate publication".¹¹

This has promoted the use of supplements to the *Diário da República*, published at a later date, but formally a supplement to a prior issue. This is seen as a unfortunate subterfuge, and the courts have established that it is the actual distribution of the *Diário da República* which determines the earliest date for the legal instrument to enter into force.¹²

A further refinement is a further time-limit of 90 days after the publication for enacting amendments (rectifications) to the published legal instrument, cf Lei n.º 6/83 art 8. Such amendments are supposed to be the simple correction of typographical mistakes, but are occasionally - and contrary to the guidelines for this institute - used for substantial amendments.¹³

2.4.2 Second and third series

For the discussion in this report, the material of the first series of the *Diário da República* is of highest interest. The material published in the second and third series is qualified by the Despacho Normativo n.º 15/82 section 2 and 3. The second series include official commentaries, executive rulings, government directives, and include appointments to office *etc*. The third series include, for instance, acts by private entities.

11. Cf Martins 1987 part VII.

12. Martins 1987 part VII points out that in 1986 alone, 174 supplements to the first series, and 239 supplements to the second series were published.

13. Then again, the courts and doctrine sustain that substantial amendments will only enter into force as from the date of their actual publication - as well "rectificações" (lei n.º 6/83, 29/7, art 6.)

Such instruments for the publication in the second and third series, are communicated directly to the Imprensa Nacional from the respective authority, in these instances the Presidência do Conselho de Ministros does not act as a coordinating agency. In these cases, a unique identification number is not assigned.

2.5 *The Divisão de documentação of the Presidência do Conselho de Ministros*

The discussion above has indicated the coordinating role in the legislative process of the Presidência do Conselho de Ministros. The Presidência do Conselho de Ministros retains the originals of the documents submitted to the *Diário da República* for publication, and has on file such documents since 1933.¹⁴

To assist the Presidência do Conselho de Ministros, the Divisão de documentação was created and started work in March 1977. Originally, the Divisão de documentação should only organize and file the legal instruments originating from the Presidência do Conselho de Ministros, but since 1980 the Divisão de documentação has filed all documents being published in the first series of the *Diário da República*. The reason is that the Divisão de documentação is the agency which receives requests from other agencies with respect to the status of the law, and that no other agency was charged with the responsibility of keeping track of the amendments in legislation.

Today (spring 1990) the Divisão de documentação has on file 46,000 references (the format is illustrated below), stored in conventional card catalogues. The documents contain bibliographical information and an indexing according to the EUROVOC standard, with some additional expansion, for instance with respect to social welfare, education, regional matters *etc.* For indexing purposes, one has commenced using the OECD's "macro-thesaurus".

For the *Diário da República*, three catalogues are established:

- (1) Indexed on author or source (the source of the proposed legislation);
- (2) Indexed on type of document (cf the categories specified above), and
- (3) Indexed on subject matter, using the thesauri mentioned above.

The document design may be illustrated by the documents representing the original statute on the publication in the *Diário da República*, and the two subsequent amending legal instruments, cf above.

14. Cf Martins 1987 part VII.

*Document design at the Divisão de documentação, examples***DIPLOMAS LEGAIS / DIÁRIO DA REPÚBLICA /**

Publicação, identificação e formulário dos diplomas.

Ass. Rep.

Lei nº 6/83

DR., I Ser., nº 173, 29/7/83

PCM-S

DIPLOMAS LEGAIS / DIÁRIO DA REPÚBLICA /

Da nova redacção ao nº 11 do artigo 10º da Lei nº 6/83, de 29 de Julho (formulário dos diplomas).

Pres. Cons. Min.

Dec-lei nº 337/87

DR. I Ser., nº 242, 21/10/87

PCM

DIPLOMAS LEGAIS / DIÁRIO DA REPÚBLICA /

São revogadas as disposições constantes do nº 1 do artigo 9º, relativamente a diplomas emanados do Governo, e dos nºs 4, 5, 6 e 7 do artigo 10º da Lei nº 6/83

Pres. Cons. Min.

Dec-lei nº 113/88

DR., I Ser., nº 82, 8/4/88

PCM-SG-DD

The Divisão de documentação states that it would have appreciated cooperation with several government institutions. It has achieved a cooperation scheme with one of the Departments of the Ministry of Finance, which in turn has resulted in needs for amendments in the EUROVOC thesaurus. It was a concern with finding ways of describing the different legal documents which were appropriate with respect to the traditions and needs of the different ministries or agencies.

2.6 A brief appreciation of the situation

We see that the requirements of the Constitution, imposing the principle of *Lex Gambetta*, make the text published in the *Diário da República* formally the *authentic* text of a legal instrument.

When a legal instrument is issued to be published in the first series, the Presidência do Conselho de Ministros coordinates its publication in the *Diário da República*, which is carried out by the Imprensa Nacional. It follows from the system that the original legal instrument may be amended by subsequent legal instruments.¹⁵

Reference may be made to the instrument being amended, but there is not imposed a strict principle of *textual replacement*, ie that it is clearly specified which text is to be replaced. Omnibus replacements may be used, repealing those clauses in prior instruments which in substance is in conflict with the current clauses. This obviously opens for many instances of interpretation and consequently insecurity of the law in force at any given moment.

Such insecurity might be removed through the publication of authoritative compilation of consolidated texts. Such consolidated publications are not, however, currently being published.

In addition there seems to be expressed a need for better inter-agency communication: "... the absence of efficient inter-departmental and inter-ministerial co-ordination mechanisms is a major problem; this is perhaps due to the verticality of public administration and to the fact that preliminary arbitration is seldom practiced".¹⁶

This determines the ramifications for the legal information situation, in which the user has to seek information in the authentic source, the *Diário da República*. The *Diário da República* as such lacks any efficient associated information system. There is therefore created a problem of identifying possible relevant legal instruments, and to retrieve all the instruments which have amended an original instruments. When all the necessary documents

15. The practice of amending the originally published instrument within a period of 90 days adds a further complexity to the situation, though this is in principle only used when there are differences between the original text sent to the Imprensa Nacional and the published text, cf above.

16. Cf Martins 1987 part V.

have been retrieved, the user is still left with the problem of fitting the pieces together and composing a coherent picture of the law in force.

Obviously, the practical problems in such a situation is to a large extent determined by the volume of material. It has been stated that the *Diário da República* is published daily. The annual number of instruments is rather high. For the period 1980-88, the numbers were as in the following table:¹⁷

Leis	592
Decretos	5,883
Portarias	9,299
Diplomas regionais	1,151
Outros	3,659

It has been suggested to the author that the traditions of the Portuguese legal system implies a tendency for detailed regulation and government intervention through the various types of legal instruments. For instance, it was suggested that vagueness in a legal instrument would be clarified through an amendment rather than left to the courts for interpretation.

The result would seem to be a situation in which the information situation is complex, and where the user has rather high costs when establishing the law in force. It is obviously a situation in which the need for efficient legal information systems has realized itself. But the most efficient system cannot rectify the situation created by the combination of the lack of the principle of textual replacement and the lack of consolidated compilations. Therefore, the further discussion of information systems should be appreciated in this perspective, as one element in a more general discussion of legal policy.

17. Cf the INFOJUR report, Grupo I, Quadro 15.

3. The INFOJUR project

3.1 *The initiative*

Based on a resolution of the Conselho de Ministros of May 26, 1988 a commission was created to report on the possible creation of a legal information system for Portugal.¹⁸ The commission was composed of representatives of the CETAL, and the Commission also had representatives from the Instituto de informática, the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República and the Gabinete de Estudos e Planeamento do Ministério da Justiça, and headed by the state secretary of the Presidência do Conselho de Ministros.

This commission reported in April 1989. The report is comprehensive, and includes a rather ambitious plan, with three alternatives, for the establishment of a legal information system, known by the acronym INFOJUR. Decisions with respect to this report were not taken at the time of the mission (spring 1990) - its level of ambition was indicated as one possible explanation.

In this situation, the Instituto de informática initiated INFOJUR more or less on its own at the end of 1989, but in close cooperation with the Divisão de documentação of the Presidência do Conselho de Ministros.

The Instituto de informática is an institution charged with a responsibility towards the modernization of public administration by information technology, including the promotion of information systems. The Instituto de informática is formally within the structure of the Ministério da Finanças. It should be appreciated that this makes the Instituto de informática, as the operator of the INFOJUR system, not directly responsible for legal information - it is consequently dependent upon cooperation with other agencies, and the INFOJUR project may therefore also be seen as an experiment in inter-departmental co-operation.

The staff at the Instituto de informática associated with the INFOJUR project is competent and enthusiastic, with a keen understanding of many of the problems associated with legal information services - not only the technical side, but also the legal and organizational issues.

18. The project history is also discussed in the enclosed paper by Luis Vidigal

It is of importance that the project is sponsored by the Secretariado para a modernização administrativa, which - like the CETAL - is an agency of the Presidência do Conselho de Ministros. Before the INFOJUR project, there was an initiative known as BIAL - Base of Information on Administrative Legislation. Almost 70 per cent of the *Diário da República's* material belonged to this category. Document design was established for the BIAL, to be amended when new demands were posed by the INFOJUR project.

The Secretariado para a modernização administrativa is a small institution with high technical competence. It is sponsoring several important projects which is perceived to have an impact on public administration, related to de-regulation, reduction of bureaucracy and other measures to modernize the Portuguese public administration.¹⁹ The INFOJUR project is seen related to these efforts, while also making public administration more transparent, and more accessible to the public. It was the impression of the author that the Secretariado para a modernização administrativa also saw the development of a freedom of information legislation in the same perspective.

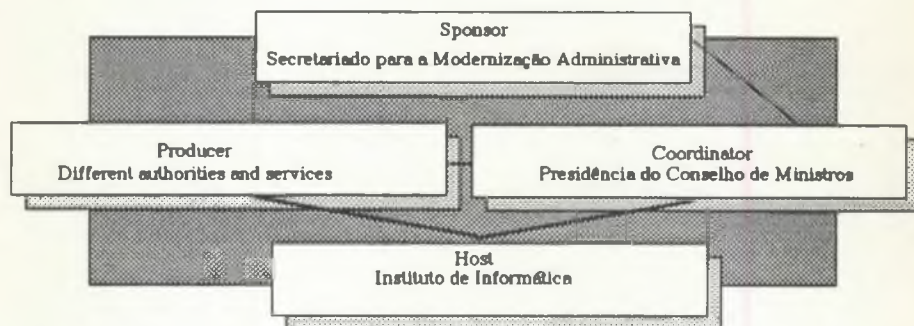
It also is important that the project has established a close cooperation with the Divisão de documentação of the Presidência do Conselho de Ministros. It is actually the manual files of the Divisão de documentação which were taken as the basis for the project. To some extent it may be justified to maintain that the INFOJUR project in this phase emerges as an effort to computerize the files of the Divisão de documentação, retaining much of the basic structure of the manual system, including the retrieval strategies.

But in addition to the documents based on the card files of the Divisão de documentação, INFOJUR also documents some circular letters from the General-Directory of Public Accounting, and documents of labour law in the data base REGTRAB (Regulamentação do trabalho) under the responsibility of the Technical and Scientific Information Service at the Ministry of Employment and Social Security. These data bases will only briefly be discussed in this report. One may note, however, the problem of formal availability factors associated with the circular letters, which are not accessible to the public due to the lack of a freedom of information legislation. Obviously this implies that a computerized service must include the possibility to protect unauthorized access to such data bases.

The relation between the parties discussed here, may be illustrated by a small diagram based on one annexed to Vidigal 1990.

19. Cf for instance the proceedings of the I.^{as} Jornadas de Desburocratização *As Empresas e a Administração Face a 1992*, organized by the Secretariado para a modernização administrativa in co-operation with Comissão de Empresas-Administração and the OECD, Lisbon, October 1989.

INFOJUR project organization



The scheme indicated above implies an emphasis on the files of the Divisão de documentação of the Presidência do Conselho de Ministros rather than capturing, for instance, new documents. It was estimated (spring 1990) that approximately $\frac{1}{3}$ of the documents of the manual files had been captured. Also, a substantial number of documents had been loaded into the REGTRAB file (the number 10,000 documents was suggested, but not confirmed).

3.2 Document design

The INFOJUR document design is rather structured. One will recall that there was a forerunner to the project - BIAL - where a document structure had been developed. This was adopted by INFOJUR, but subsequently somewhat amended, this explains the order of the fields and that some of the fields may look repetitive. One should also be aware of the co-ordinating influence of the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República, which has effected a somewhat harmonized development of document designs for different systems (cf below).

Below follows an attempt to describe the document format. It should be emphasized that it is *not* identical to the forms used in the INFOJUR project (the "Folha de indexação" for legislation), and that the English translations of the different fields may be inappropriate.

Document structure, INFOJUR

<1>

Area: Legislation

Text: Authentic text or abstract

Parts: Which of the fields have not been completed

Type-d: Type of document Number-d: Document number Dm-d: Day and month of document

Year-d: Year of the document Rat: Ratification Aut-iss: Authority which has issued the document

A/N/L: Article, number, line

Source:

Num-s: Number of the source

Date-s: Date of the source

Pages: Number of pages

<2>

Abstract

<3>

Descriptors

Specifies choice of "thesaurus" (UNIDAS), continues with indexing terms.

<4>

Descriptors

Geographical identification, name of organizations etc

<5>

Related doctrine

<6>

Appropriate authority

<7>

Applicable for

<8>

Modifying prior documents

<9>

Subsequent modifications

<10>

Related case law

<11>

Related documents

<12>		Ent-rea:
Entry into force		
Day-doc: Day		
Month-doc: Month		
Year-doc: Year		
Class:	Internal classification	
Article:		
Number:		
Line:		
Section:		
Prior: Elements which may be specified by the source, not in use		
<13> Text		
Authentic text		

One will notice that the document structure is rather sophisticated, and that it consequently implies considerable resources for specifying these fields. But, as the INFOJUR legislative data base is secondary to the files of Divisão de documentação of the Presidência do Conselho de Ministros, the *additional* work carried out within the INFOJUR organization is more modest. There has been an attempt to control the vocabulary of descriptors used in field <3>, but this was abandoned - though it is foreseen that a consolidation may take place at this stage, the project organization estimated that 90 per cent of the different descriptors had been captured, and that a consolidation of the specified descriptors could be the basis for a controlled vocabulary.

One will also note a number of fields containing citations - cf fields <8> and <9>, which links modified and modifying documents, field <10> which links legislation to associated jurisprudence, and field <11> which identifies related documents. The document identifiers specified in these fields may be the basis of a hyper-jump facility, the user requests access to documents identified by the citations in the current document. Also, using the UNIDAS "thesauri" in which the different types of citations are contained, one may have access to documents citing the current document, not only cited by the current document. Though these facilities are not exploited by the current retrieval software, they represent interesting possibilities.

An added problem is that case law is not documented within the INFOJUR system, but by the Ministry of Justice at its computer center, cf below. The relations between various types of legal sources is, in the opinion of the author, a strong argument for finding a solution which allows for hyper-links and other relations being exploited.

One may also indicate that the document has fields which would need updating after its first inclusion in the data base, cf field <9> which contain information on subsequent modifications.

It was estimated that one document amounted to approximately 1K of storage.

The project organization was concerned with what documentary unit was most appropriate. INFOJUR - like most legal information services documenting legislation - uses the article as the documentary unit. There is strong evidence that for retrieval purposes this is the appropriate documentary unit²⁰ But there are problems associated with this choice. Some statutes or regulations are complex, it was suggested that they might comprise as much as 2,000 articles. When retrieving one article, the document might be linked by pointers to the logically preceding or succeeding documents. Obviously, the documents would not follow physically in the same order on the disk, and equally obviously, an answer set resulting from a search request may not contain all articles of a statute or regulation, nor the articles in their logical order. The user will therefore, in order to access other documents representing preceding or succeeding articles, have to do this step-by-step, following the pointers through the logical structure. A preferred solution would have been a facility providing the possibility of jumping within the logical structure, which is not supported by the current software.

This deficiency result in the problems indicated with respect to document design, but the choice of a whole act or a whole regulation as the documentary unit would not be a solution, as this would severely reduce retrieval performance.

One will note that field <13> is specified for the authentic text of the document. This field is currently not in use. The INFOJUR system therefore cannot support the source function of a legal information system: The user has to use an auxiliary system to access the authentic text of the retrieved source.

This limitation is dictated by the pragmatic of the project, especially the lack of a simple and relatively cheap solution for capturing the text. It is not a result of decision of what would be the ideal solution. Rather, the project organization was quite concerned with finding solutions to capturing the authentic text, and this will be discussed below.

20. Cf the extensive study Ole M Erikstad *A Comparative Study in Automatic Text Retrieval*, Papers on Computers and Law 16/1979, Norwegian Research Center for Computers and Law, Oslo 1979.

Document design always defines the upper threshold for the functional performance which can be achieved by an information system.

In this case, the relevance assessment is well supported by the abstract appearing in field <2>. Experience indicates, however, that the user - when identifying a possibly relevant document - tends to dip into the authentic text to confirm the tentative opinion based on the abstract or title, browsing in long documents by using a focus or KWIC function. Lacking the authentic text, the relevance function will also be somewhat impaired.

The retrieval function is supported by the various inverted files (or UNIDAS "thesauri") created on the basis of the various fields. The retrieval function would be enhanced by the inclusion of authentic text, which would supplement the descriptors (especially of fields <3> and <4>) with the original words occurring in the source. Experiments have proved that retrieval performance based on the authentic text alone exceeds that based on the abstracts or indexing terms alone, but that the combination exceeds both these alternatives.²¹

Both for improving retrieval performance and to support the source function, it will be necessary to supplement the documents with the authentic text.

It may be suggested that the system characteristics, as imprinted by the current document design, mainly will be of help to expert users, like the users within the Divisão de documentação or the CETAL. This is, of course, a limitation of the current version of the system, but - and the author would like to emphasize this - it is by itself important and essential to the users. Due to the crucial role of these experts users review and reform of legislation, improved information services for them will in its turn result in an improvement over time in the legal system as such, from which all users will profit.

21. Cf Tove Fjeldvig "Controlled Experiments in Text Retrieval: An Appraisal of the Results", in: Jon Bing and Knut S Selmer (eds) *A Decade of Computers and Law*, Norwegian University Press, Oslo 1980:147-171.

3.3 UNIDAS²²

The system employed by the INFOJUR project is the Unisys general retrieval system UNIDAS (an acronym for "Unisys Document Accessing System") level 7,²³ running under OS/1100 on Unisys equipment, utilizing DMS 1100 for data base manipulation, TIP 1100 and CMS for real-time communications interface and (optional) MAPPER for data entry. It has a modular design with well-defined interfaces, and allow different configurations to be established for different applications.

The major parts of the system are:

- document (or information) data base (text file)
- thesaurus
- index
- retrieval language (dialogue)
- front-end systems
- macro facility
- report facility
- on-line updating system
- security and accounting system
- utility functions

The system works similar to a general text retrieval system, but with some specific features.

It has, however, the sophistication that not one, but several, inverted files are created when establishing the data base. The user may specify

22. The author would like to thank the UNIDAS project manager, Dr D Schwabe, of the Applications Development Center, Unisys Deutschland GmbH, who in a letter of July 31, 1990 has responded to a number of questions, and made available the documentation on UNIDAS. The report does not presume to offer an appropriate presentation of this extensive system. Some of the presentation is based on system documentation, UNIDAS (IRS) 1100 Information Retrieval System of April 20, 1990.

23. UNIDAS level 8 is expected to be released by January, 1991.

which inverted file - which in the UNIDAS language is called a "thesaurus".²⁴ - is to be updated from that field. And, as is indicated for field <3> in the form above, one may channel the elements of that field to different thesauri, for instance one thesaurus for each ministry. The UNIDAS system supports as many as 99 different thesauri.

Indexing may either be manually with or without the authority list of the thesaurus, or automatic indexing against a list of stop-words.

This structure has some impact on the understanding of what is a data base. The UNIDAS structure seem to imply that one has one text file, where the documents are stored in their original form. Then there are a number of "thesauri", which may be based on specified fields from all or a sub-set of the total number of documents. Each "thesaurus" may be perceived as a virtual data base, and as much as 10 "thesauri" may be combined for one search request. This is seen by the developers to support "concept retrieval", though the term is then used differently from its use, for instance, within the area of knowledge based systems.

In addition, the UNIDAS system supports an index which is seen as the link between the terms of the thesaurus and the document data base. It may also contain inverted lists of "aspect values (relations)", supporting what is described as "retrieval by content".

It is not completely clear to me what the advantages of this solution are, for instance, to a single inverted file where search terms in the file are qualified by field assignment. It is, however, obvious that the inclusion of relation between specified terms may make it simpler to handle defined indexing languages. In the INFOJUR project, as discussed above, documents are intellectually indexed using defined indexing languages. Perhaps UNIDAS supports such schemes better than more traditional systems.

On the other hand, one should point out that if the INFOJUR project moves to documents mainly in authentic text, automatic indexing will be emphasized. This is also supported by the UNIDAS system, but the indicated advantages would then seem to be of less importance.

There is no reason to doubt that the retrieval system is sufficiently powerful to support the INFOJUR system. The search language corresponds to ISO TC64/SC4 recommendation for commands for interactive search systems, complex Boolean search requests may be expressed using parentheses, and

24. This due to the fact that the thesaurus also may contain information on the relation between included terms (in different languages, actually as much as 64 different languages). The thesaurus relations correspond to ISO 2788 containing documentation guidelines for the establishment and development of monolingual thesauri, and ANSI Z39.19 guidelines for thesaurus structure, construction and use.

re-use of previous retrieval results can be used as extensions to simple Boolean requests.

The retrieval language is rather complex, and contain six major parts:

- the system control dialogue and messages
- the thesaurus related dialogue
- the postco-ordination dialogue
- the dialogue for post-search methods
- the document related dialogue
- the dialogue for on-line document modification

There is no limit to the length of a document, consequently UNIDAS will be able to handle also documents in which the authentic text is included.

One should at this stage not be too preoccupied by the choice of retrieval software, but make sure that the documents are specified in such a way that if another retrieval software at a later stage is to replace UNIDAS, this new system will not require post-editing of the documents for creation of new data bases.

For input, a data entry program has been developed in MAPPER, the same fourth generation language encountered with respect to Diplomas (cf above).

Search requests are based on selection of thesauri and use of Boolean logic. UNIDAS may, of course, be searched directly through command or menu driven interfaces. The Instituto de informática has, however, not felt that this interface is appropriate for the general end user, and has started a development of an end user interface, using the object oriented programming language SMALLTALK. This was not (spring 1990) sufficiently developed for demonstration purposes. It is seen as a local interface, residing in end user equipment for assisting the user in his or her dialogue with the UNIDAS facility.²⁵

As a tentative conclusion, one may suggest that the current system solution is sufficient for those expert users to which the system at this time mainly will cater. For a general legal information service, distributed to public administration and private practicing lawyers, there still is much to be done. The interface is an interesting development, which may provide a solution for a user friendly retrieval environment, and which also may be retained even if the retrieval "engine" behind the stage is replaced.

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25. It may be mentioned that there also are technical problems of another level. Some of the national Portuguese characters are not supported by the protocols employed in the national telecommunication systems, a problem obviously related to the possible user friendliness of the future solution.

3.4 Authentic text

3.4.1 Introduction

One of the major problems facing the INFOJUR system is the problem of capturing the authentic text of the documents.

The first question to be answered is whether it is really necessary to capture the authentic text. The firm opinion of the author is that this is necessary if the system is foreseen to be of any utility to other than expert users. It is true that the current document design will allow the identification of possibly relevant documents, and that these then may be looked up in the *Diário da República*.

In this case, the INFOJUR system is mainly seen as a *retrieval tool*. Experience has taught that legal information services do not function only as a retrieval tool, and that much of the literature has overstated the importance of the retrieval function.

A computerized system is often used as a "reading glass". The lawyer wants quick access to a section to check its precise wording. The lawyer wants to be able to browse among retrieved sections without having to collect a large number of volumes of the *Diário da República* on his or her desk.

In addition, both the relevance assessment and the retrieval function will be improved by the addition of authentic text.

The conclusion is therefore that it will be desirable to supplement the documents (as has been foreseen by including the field <I3>) by authentic text, and that this is a prerequisite for launching a general legal information service.

3.4.2 Capturing the historic text

Second, one will have to address the problem of capturing the text. This may be divided in two sub-problems, one is the capturing of the historic text, the other of capturing the text of the future legal instruments to be issued.

As far as the *historic* versions are concerned, there are two major methods.

An attractive solution would be *optical scanning*. In Portugal there are experiences in this respect at the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República. The Gabinete de

Documentação e Direito Comparado da Procuradoria-Geral da República has also experimented with the *Diário da República*, but found that it was difficult due to the quality of printing, and the thin paper used, which blurred the printing on one page by the shadow shining through the paper from the characters on the reverse side of the page. These problems are well known, and may at the present technological level obstruct this possibility. On the other hand, the experiments of the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República were made by optical scanners driven by micro-computers, and better results may be obtained by more sophisticated equipment. The feasibility of this possibility can only be settled by experiments.²⁶

It has been presumed above that one will want to have the text in machine readable form as a result of the scanning, *ie* in a form which make text retrieval possible. It is, however, also a possibility only to scan the *image* of a page, which then may be displayed like a graphical picture on the screen of the user. This is the solution chosen by many national libraries for preservation of journals *etc*, where diagrams, text and fly-specks alike are scanned and retained by the system.

This would allow a hybrid solution, where there was forged some link between the INFOJUR system and a "image data bank". When a possible relevant document was identified, the user requested the appropriate page from the "image data bank" to be displayed. This possibility has been considered by the INFOJUR project team, and the feasibility of producing "image data banks" on CD-ROMs to be accessed locally by end users have been considered.

This is a rather innovating solution. But there is associated insecurity, there are no other solutions which can be directly copied.²⁷ It would therefore seem that such a solution will demand considerable resources for development.

There are current efforts to consider the relative functions of local and central components in a legal information service. Several providers of

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26. It has been suggested to the author that there are programs available which will cope with the *Diário da República*, and which would be available for free experiments.
 27. Possibly the CD-ROM system created in co-operation between West Publishing Company and Wang Laboratories, integrating a CD-ROM collection of the *2nd Federal Supplement* with the computerized WESTLAW service may serve as a model. But here the CD-ROMs have digitalized texts rather than images, consequently the solution can not be quite identical.

such services experiment with *CD-ROMs*, which generally are charged by downloading from the data banks of the service providers. There is considerable dynamic in this development, and there may emerge solutions which will be appropriate also for the INFOJUR project, though currently it would seem that such solutions are lacking.²⁸

A brute solution would be re-keying the whole material once more, using a data entry or word processing system. It is not an attractive solution, but in practice a rather simple one. The main disadvantages are, perhaps, economical - these will be dealt with below. The advantage of the solution is that there are no unknown components, the technology is well tested and understood, it is simply a matter of finding the resources necessary for organization and production.

3.4.3 Capturing new text

All - or a very large fraction - of the texts to be included in the INFOJUR system are published in the *Diário da República*. An obvious solution would be to find a co-operation scheme with the Imprensa Nacional to re-utilize the text.

This is in principle a simple solution. Presuming that the Imprensa Nacional uses a computerized type-setting system, it implies that the texts in computerized form, including the type-setting codes, are communicated to the INFOJUR organization. Here the text is stripped of the type-setting codes (perhaps in some cases, the type-setting codes are replaced by codes governing the updating of the INFOJUR data base), and the text is inserted into the document field <13>.

Two additional comments may be made.

One is on *update response*, ie the time from when an amendment is made and it is reflected in the data base. The update response should be at a minimum, and experience tells that a fast update response is important for building user confidence in a system. The INFOJUR document structure requires heavy involvement by an indexer, which by itself is time consuming. If this delays the updating of the data base in any perceptible way, one should consider building a "hot file" in which the authentic texts

28. Cf Jon Bing "Computer-assisted working environment for lawyers - Part II: From information retrieval to active decision support"; CI-IJ Symp (89) 2, Council of Europe, Strasbourg.

were made available at once, and which were transferred to the appropriate base when the necessary documentary superstructure had been added.

Second is the possibility of integration between traditional and computerized methods. It might be of interest to use the data base to produce off-prints of certain documents, or compilations of certain types of documents, like all legal instruments affecting a certain geographical area, decisions of a certain authority *etc.* For this benefit to be reaped, a higher degree of integration between the INFOJUR system and the system operated by Imprensa Nacional would be necessary, and some suggestions will be made on this below.

3.4.4 Costs

The different systems for capturing the authentic text also have cost consequences. Currently, it has been suggested to the author that the costs for scanning and re-keying is not very different, though scanning may be gaining an edge on re-keying.

For both approaches, one has to have verification and proof-reading routines, both computerized and manual. The cost for this element will be more or less the same for both solutions. For scanning, costs will be associated with investment in equipment, while for re-keying it will be associated with labour costs. Also, it has been suggested that scanning may be compressed into a shorter time, and that the organizational setup may be somewhat simpler, as not a large number of persons has to be employed.

For the volume that the *Diário da República* represent, the costs will nevertheless be considerable, and of a magnitude to make the capturing of the authentic text a major policy decision.

One might query whether the capturing of the authentic text may not be postponed until a possible consolidation has taken place. The author is skeptical to such a strategy, as this would postpone the creation of a legal information service of value to the end user, and also presume that the computerized system is not necessary for a possible consolidation process: In a system where textual replacement has not been adopted, it may be necessary to make extensive legal research to identify those legal instruments repealed by an omnibus clause in another instrument.²⁹

One is therefore left with the hard decision of whether one should make available the necessary funds for capturing the text of the published

29. The possible advantages of a consolidation process will be discussed below.

legal instruments. When considering this question, one should also consider the *savings* such an exercise may have both within the public administration, and in the private administration. This is not mainly a question of saving time in legal research - though this potential certainly should not be disregarded. But one should especially consider the savings implied by the improved availability of the law. This may make it easier for companies and organizations to obey the rules.

In Norway, local and national regulations were until recently not consolidated and only available through a system very similar to the Portuguese *Diário da República*. A major company pointed out that the fact that this company overlooked a local regulation on activity in a certain fjord, made the company choose this fjord for experiments in off-shore installations. This non-compliance resulted in a loss of twenty to thirty million crowns in abandoned project investment and compensations - a loss the company would not have taken if the information situation had been better.

It is this type of consequential loss that may be avoided by improving the legal information situation. Obviously, this is part of the calculations to be made in order to decide whether the costs of converting published text to machine readable form is cost-effective.

4. Related activities

4.1 Case law

Case law is published in a number of different journals. For instance, the first series contain decisions of general mandatory force (the assents) as well as decisions of the Constitutional Court like the ones which declare that some provision is in violation of the constitution. In the second series are published decisions on concrete, specific cases by, for instance, the Constitutional Court.³⁰ and the Constitutional Court also maintains publishing systems of its own. In addition there is the Supremo Tribunal de Justiça, the Tribunal de Contas and a Military Supreme Court.

In the *Boletim do Ministério da Justiça* are also published decisions by the Supreme Court of Justice. It was suggested that approximately 10 per cent of the decisions were published, though this may be higher for the Supreme Court of Justice. The appeal court decisions appears in journals published by private companies or professional societies (for instance the *Colecânea de jurisprudência*).

Case law would seem to play a role similar to that of most civil law countries: It is an important source of law, especially for interpretation statutes or regulations. The impression of the author was, however, that the activities of the legislators on different levels were relatively high, which may de-emphasized the role of case law relative to other civil law countries.

In 1988, approximately, computer projects for the supreme courts were initiated following the pilot project of the Pareceres da Procuradoria - Geral da República of 1987. The Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República (cf below) participated in the projects, where it was promoted a standard for the document design. The objective has been to determine standards that are appropriate for the systems falling within the responsibility of the Ministério da Justiça.

Of the 2,000 decisions of the Constitutional Court, approximately 1,909 has been registered, and there is an annual growth of approximately

30. The Divisão de documentação of the Presidência do Conselho de Ministros does not concern itself with case law, though some decisions are part of the first series of the *Diário da República*.

300 decisions.³¹ The Supreme Administrative Court has registered 12,497 of approximately 50,000 decisions. The Supreme Court of Justice still calculates 2-3 years before the backlog is registered: The Court is planning to take civil cases back to 1966 and penal cases back to 1982, in both cases delimiting selection according to major legislative reforms.

The document design is similar to that of INFOJUR, though the Supreme Court of Justice is considering authentic text for all but repetitive cases. Below is indicated the type of fields included.³²

Case law document design

Unique number
 Name of judge(s)
 Voting:
 Publication: References
 Privacy: Confidentiality restrictions, also flowing from security of state.
 Court from which the appeal has been passed
 Initial procedure - date
 Appeal: Type of grounds
 Type of decision
 Commentaries (including whether this is a plenary decision):
 Type of claim: General areas
 National legislation: Standardized citations
 Community law:
 Foreign legislation:
 International citations: Treaties or international decisions (control of implementation)
 National case law: Bibliographical citations
 International case law
 Foreign case law
 Descriptors: Controlled vocabulary.
 Summary

In this form, the controlled vocabulary is maintained by a committee of indexers only working with this, with a view of arriving at a conform description of cases. Again, the author would like to indicate skepticism for

31. I am indebted to Dr José Manuel Santos Pais of the Procuradoria-Geral da República for giving me the exact number of documents in the data bases of May 25, 1990.

32. This is based on the author's notes, and may be inaccurate and incomplete.

using too much resources in this respect, experience shows that it is extremely difficult to achieve both inter- and intra-consistency in indexing work.

The cases are often handwritten, but word processing equipment is being introduced and will make it possible to capture data at the source.

The system is running at the Computer Center of the Ministério da Justiça, which is an IBM facility. The retrieval software is the IBM system STAIRS, a well known work horse for legal information retrieval services around the world.³³

The STAIRS system is solid and trustworthy, but it is not controversial to indicate that it is today a somewhat dated system. Integration with INFOJUR, basing itself on a different operating systems and different retrieval software will be difficult as long as this solution is maintained.

4.2 Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República

The Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República started its activities in 1981, which corresponds to the time Portugal requested entrance to the European Communities. This created a need for comparing national and Community legislation, and in 1984 the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República gained access to the CELEX legal information service of the Communities. Today, Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República still is a consultancy for the public administration, working for the Ministério da Justiça, the Law Reform Commission, the Prime Minister's Office, the President and the Parliament.

Since then, the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República has in a systematic way gained access to foreign legal information services, and acquiring expertise in using such services. In this way, the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República has gained a comparatively high expertise in different national systems, the search languages, document designs *etc.*

Today, Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República provides access to the following systems:

BELINDIS - Belgian and Luxembourgian legislation and case law.

33. The earliest example is probably the Brazilian PRODASEN system of 1972.

- CELEX - The legal information service of the European Communities.
- DIALOG - US cases of labour law and patent law
- ECHO - Several legally related data bases, also the ELLIS bibliography on Community law
- ESA-IRS - Bibliography based on the library of the International Labour Organization (ILO) and related information.
- GAM - Data bases related to the proceedings within the French parliament.
- IBERLEX - Spanish legislation.
- ITALGIURE - The comprehensive, national legal information service of Italy
- JURIDIAL - French legislation, case law and bibliographies.
- JURIS - The comprehensive, national legal information service of the Federal Republic of Germany.
- LEXIS - One of the two major legal information services of the United States of America, provided by Mead Data Center and documenting case law, statutes and regulations.
- RESAGRI - Legislation *etc* related to agriculture in France.

It must be permitted to note that such an organization, linked to major legal information services all over the world, and generating competence based on the experiences from use of these services, is rare indeed, and should be considered a valuable resource in the future undertakings in the area of legal information services in Portugal.³⁴

In addition, the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República has experimented in creating a rather large number of smaller information systems for micro-computers, all together 13 systems. The data bases include a system for international documents from the Council of Europe, the United Nations and the European Communities; bibliographies; international case law, and international law (flowing from treaties or Community directives) implemented in Portugal.

For the system documenting international legal instruments, one started out with the Council of Europe, moved to the United Nations and the Hague Conference. All types of documents are registered, from treaties to colloquies. This system has descriptors on three levels, a general level, a controlled level and an abstract. Citations, both codified and un-codified, are included. And catalogue numbers are included for human rights, penal law and Community law. Two codes for geographical area are included, the first

34. The only comparable organization known to the author, is the CEDIA of the Paris Bar.

based on ISO numbers for countries, the second for larger geographical areas.

The bibliographical data base includes some 8,000 references, and the Community bibliographical data base (in which one has cooperation with CELEX) increases with some 1,000 references annually.³⁵

The authentic text of the documents has been captured by scanning, and quite good results have been obtained, some 98 per cent of the characters being correctly interpreted by the scanning software. One has used a French program, Read-Star 3+, which improves its performance through feed-back.

In designing the systems, one has used different software - several of the systems are based on MDBS-4. One is currently exploring alternative retrieval packages for micro-computers (STATUS, SIFT, BRS *etc*).

Care has been taken to develop user-friendly interfaces, and principles for designing such interfaces.

The systems have been developed for micro-computers partly because one will offer the systems to other users for running on local equipment. One would like to find retrieval software which could be "scaled up" from micro-computers to mainframes.

The Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República gives the feeling of an experimental and enthusiastic environment, much like a research unit. It certainly may prove to be a valuable resource for the further development of legal information service, as knowledge of computers and law has here been combined into "legal informatics".

In addition, the Attorney-General's office has documented 6,154 of its own advises, and its library of 9,911 records. These are in addition to the data bases mentioned above.

4.3 Other systems

It was mentioned that there have been several initiatives related to computerized legal information services, but that few of these have prevailed. In this section, only two examples will be mentioned.

35. It must be permitted the author to note that these are based on the HURIDOC format, which initially was introduced by a report from the Norwegian Research Center for Computers and Law.

One is the initiative of the Instituto de informática known as INFOCID. This is an elegantly designed telex services offering citizens information on various activities and institutions of public administration. It is foreseen that a bridge may be established between INFOJUR and INFOCID, making information available to the lay person. One appreciates the need for presenting this information in a different form than the legal information communicated to professional users of legal source material: Lay persons do not have the necessary background information to interpret and consolidate the raw data as presented by INFOJUR. Currently, this possibility is only a signal of the Portuguese taking an approach to the problem which will allow a future development of the system also in the direction of lay users.

The second is a private initiative, curiously also named INFOJUR, (Serviços de Informação Jurídica, Lda) at Porto, which seems to be integrated with the journal *Atualidade Jurídica*. This service offers several data bases, summarized below:

Jurisprudência Penal; 1,100 cases from the Supremo Tribunal de Justiça (1986-89)

Jurisprudência Laboral; 800 cases from the Supremo Tribunal de Justiça from 1.1.1988 and major cases published in the *Acórdãos Doutrinários do Supremo Tribunal Administrativo*.

Jurisprudência Civil; 1,000 cases which include important cases of the Supremo Tribunal de Justiça published in the *Boletim do Ministério da Justiça* for 1986-87, and all decisions of 1989, and synthesis of cases from the last 9 years.

The data bases are announced to be expanded, and data bases for administrative law, the Tribunal de Contas and administrative legislation is to be added. The service seems based on distribution of diskettes to users for the operating systems MS-DOS, XENIX and UNIX.

This initiative is interesting, as it indicates an interest in computerized services also in the private sector. The author has no information about the system apart from that gained from its promotion material. It is, however, appropriate to suggest that the low coverage offered (a very shallow coverage of a few years of decisions) and the reliance on end-user equipment of the lower range make it uncertain whether this initiative will survive in the market place.

5. Conclusion: Possible future development

5.1 Introduction

In this final section, the author will attempt to point out some possible strategies for future development. This is a precarious exercise; having been permitted to look somewhat closer at the Portuguese situation, there has been revealed a number of striking and important differences between the Portuguese legal system and the one of which the author is most familiar. Also, the situation has a richness in traditions, organization, politics *etc* that he cannot fully grasp.

It is obviously pretentious to make suggestions after such a brief study of the situation. The excuse may be that the author has some familiarity with legal communication processes and information systems from several jurisdictions, and feel a duty at least to indicate some possibilities which experience from other countries suggest that may be considered also for Portugal.

It may be hoped that though inappropriate in detail, they may stimulate policy discussions for the future development.

5.2 Further integration of legal information services

One obvious possibility, which also has been suggested in many of the interviews with Portuguese experts, is the further integration between various legal information services. Especially two possibilities should be considered in this respect.

First, the integration between the case law system currently maintained at the computer center of the Ministério da Justiça. It is not difficult to argue for a national legal information service to include both legislation and case law. Obviously, case law often includes important information on the implementation of legislation - in interviews, the role of the Constitutional Court was often emphasized. Ideally, a hyper-text solution should be found,

which makes possible to jump directly from an article in a statute or another legal instrument to cases discussing that article.³⁶

It would be too rash to suggest in which way such an integration should take place. But it may be respectfully suggested that the current text retrieval system used by the Ministério da Justiça, STAIRS, may need a successor in the near future, and that the Ministério da Justiça - like the Presidência do Conselho de Ministros - might find an appropriate host in the Instituto de informática, where either UNIDAS or a different software was made available. At any rate, one should look for a solution to achieve a higher degree of integration between the systems documenting legislation and case law.

Second, one might like to consider integration between conventional and computerized systems. This would involve the Imprensa Nacional and the publication of the *Diário da República*. The author has not had information on the system for production of the *Diário da República*, to what extent and in which way computers today are used, etc. It is, however, rather obvious that this publication is of crucial importance for the conventional legal information services, both for legislation and case law. It is also obvious that the job of producing the *Diário da República* (which has functions outside the legal system) within extremely brief time limits etc, may pose difficulties for phasing in a new system. Acutely aware of the practical problems which may be involved, one may nevertheless suggest that potentially the Imprensa Nacional may achieve an important place in a total computerized information services, similar to that of the Austrian Österreichische Staatsdruckerei.

The need for integration is derived from two objectives. One, to capture the text of legal instruments (and case law, as far as this is printed in the *Diário da República*), and two, being able to produce specialized publications of existing legal instruments, like compilations of statutes and regulations for a certain geographical area, a certain district etc, or off-prints including the basic legal instrument and all amending instruments of a certain piece of legislation or off-prints for consolidations.

This needs careful planning. There are many examples of such integration being attempted by (1) taking the printer tapes, stripping the text of printing codes, possibly replacing printer codes by codes governing the creation of the data base;³⁷ (2) Updating the data base from the printer

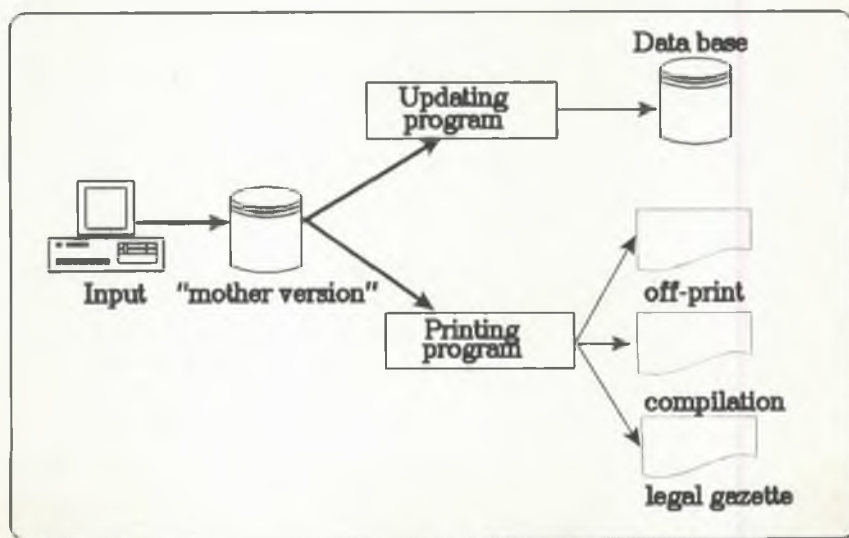
36. The "thesauri" structure of UNIDAS would support such functions, as a "legislative citation thesaurus" might provide access to cases citing different legal instruments, cf above.

37. For instance, the printer code interpreted as "Bold type face, point 12" is replaced by a data base creation code saying "Title, new document".

codes. (3) If off-prints are desired, the documents are downloaded from the data base. In this case, however, much of the detailed information contained in the printer codes has been lost, and re-formatting and lay-out may become difficult, requiring quite extensive post-editing.

In Norway, for publishing of the official journal, the Lawdata foundation has adopted a different solution, which certainly is not original.³⁸ This method is based on the maintenance of a "mother version" of the text, using universal codes which later may be expanded both to the printer codes in use, and to the data base maintenance codes in use. Subsequent off-prints *etc* are printed on the basis of the "mother version" rather than the data base. Use of universal codes make it possible to expand these to the printer codes used by the printing house asking for the text, also other printing houses than the Imprensa Nacional.

"Mother version" and different products



38. The author first saw this method in practice in the State of Washington, 1972, with respect to the legislative information system, LIS.

There are also other possibilities of integration and advantages to be reaped from this, for instance integration with the production of the *Boletim do Ministério da Justiça* and the legal information service, and integration between the legal information service and Diplomas, the legislative information service.³⁹

5.3 Consolidation

A major - perhaps *the* major - challenge of legal information services is the possibility to achieve a consolidation of the legislation and other types of legal instruments.

Whether a consolidation is desirable, is a major political assessment which may in principle be made independent of the legal information service. But it is probably true that *if* one decides to consolidate the current system, computerization is a prerequisite. A computerization may therefore be seen as a strategy which opens this option to the political level.

The advantages of a consolidation seem obvious: Easier access to the law for professional users of legal source material and lay users alike, easier understanding of the law in force, less instances of violation of rules due to lack of knowledge (*error iuris*) or misunderstandings, *etc.* The disadvantages would mainly seem to be elements of costs, a project for consolidation would be a long term project involving high legal expertise and a considerable organization.

It may be of interest to note that when legal computerized services first were introduced in the early 1960'ies, they were employed to achieve codifications and consolidation of state statutes and regulations in the USA, the interdependence between computerization and consolidation is therefore one of long standing. In both Denmark and Norway - jurisdictions well known to the author - consolidations of regulations were achieved through computerization in the 1980'ies.

A consolidation presumes that all valid legal instruments can be identified. In Norway, this was achieved by all regulations published after 1945 being computerized, and made the basis of an editorial effort, where repealed regulations were weeded out, and amending regulations were edited into the basic regulation. Obviously a large number of issues of interpretation had to be solved along the way.

39. This presumes that a solution is found for protecting information in Diplomas from unauthorized access, as proposed legal instruments are not public till their adoption and publication.

The result was a tentative compilation of regulations in force. It was obviously incomplete, as many regulations prior to 1945 were still in force, and due to the fact that publications procedures until 1967 was less strict than in Portugal. Therefore, the tentative codifications were communicated to teams in the respective ministries, for completion and correction. On this basis, a first data base of regulations in force was created.

This indicates the outline of the necessary procedure. It may be of interest to note the necessity to register legal instruments which during the editorial process are disclosed as not in force, and that in the editorial process, the use of text retrieval for identifying conflicting instruments *etc* is very useful, nearly indispensable.

One may also note that the "tentative data base" created will be of great utility to users, as this contains a large fraction (how large, depends on how far back one decides to go, and the quality of publications routines) of the legal instruments in force. The users will be well assisted in the traditional legal research - identifying relevant documents, finding amending documents, interpretation and *ad hoc* consolidation.

This implies that the costs may be distributed over several years, being an activity parallel to that of operating the legal information service. One would probably have to supplement this with an additional rule in issuing new legal instruments, that of textual replacement, which would ensure that new legal instruments were published in a consolidated way and in itself contribute to the consolidation effort.

To an outsider, this emerges as perhaps the most exciting possibility of the development of legal information services in Portugal.

5.4 A Portuguese legal information council?

The INFOJUR project was described as an experiment in inter-agency cooperation. It is easy to see relations between different organizations, some of them indicated in the figure above, describing some of the institutions involved in the INFOJUR project, a figure which obviously is not complete, as it lacks the Ministério da Justiça, Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República, Imprensa Nacional and certainly many others.

In Canada, the Canadian Law Information Council - CLIC - was organized in 1973. This non-profit organization was formed by the Department of Justice, the Law Societies and the provincial governments. In principle this is a private, non-profit organization which also demonstrates a fair amount of independence with respect to the governments, both federal and provincial. The CLIC is charged with the objective of achieving better

legal information systems, both traditional and computerized, improving co-operation between actors (for instance, between private publishers) *etc.*

This model has been adopted in some other countries. Norway had such a council to improve co-operation between different organizations in the initial phases of the establishment of a computerized service, and in Denmark, the Retsinformationsrådet has been a successful policy-making institution with the area.

It may be that Portugal also might profit from such a policy-making organization, which governed the development of legal information services, both conventional and computerized, and their co-operation - a *Conselho para o sistema nacional de informação jurídica*. Such an organization might, apart from government institutions, have representatives of universities, professional bodies, and private companies. It would need a modest secretariat, and organizations like the Instituto de informática or the Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República are obvious candidates for this role.

Let this final and modest suggestion terminate this brief report from an exciting and emerging situation for legal information systems.

ANNEXES

HOW LAWS ARE MADE

Final procedures in official legislative process

By Dr. França Martins (a)

Secretary-General of the Presidency of the Council of Ministers

February 1987

(a) Translated by J. Pedro Alcântara

I. Introduction

1. The final procedures in the circuit which begins with the decision of legislating and ends with the publication in the *Diário da República* of the text promulgated by the President of the Republic have a political component (the meetings of the council of ministers), as well as an administrative element due to the path this process pursues.

If it is quite obvious that the first has an eminently political "decision-making" character at legislative level, the same cannot be said about the second, on grounds of the existence of two institutions which co-operate at this stage of the process: the office of the state-secretary of the Presidency of the council of ministers and the general-secretariat of the Presidency of the council of ministers.

In this institutional set-up, to be found in its present form since the 1st constitutional government, there has been either a greater centralization of operations in the office of the general-secretary (evident in governments led by the *Aliança Democrática*/right-wing coalition), or a more compliant distribution of tasks between both organizations (more typical of Socialist party governments).

2. Our duty is to assure, being in charge of one of the mentioned organizations, that our share of responsibility in the process is pursued in an efficient and safe way. However, taking into consideration the experience of the past in terms of variability of the political atmosphere in connection with government changes, one can say that the formula to be adopted must not be rigid (since it is partially dependant on which parties are represented in the government) but on the contrary rather flexible, attending to the personal leadership style each Prime-minister has.

In other words, it is easier to adjust the sharing of tasks between institutions which possess a more fluid organization (such as ministerial cabinets) than to make important changes in a firm administrative structure.

II. Fundamental final procedure rules

3. As in all collegial organizations the council of ministers has at its disposal (in all governments) a document in which it tries to establish the rules for its own functioning : the *Regimento do Conselho de Ministros*.

Its natural role as an internal control document for the council of ministers accounts for the somehow reserved character it possesses. The participants in this course were, however, allowed to receive one copy of this document, as part of their working material.

4. The *Regimento* of the council of ministers is essentially concerned with two areas: one has to do with regular functioning and the second with the levels of "decision-making".

The first includes rules about the regularity of assemblies, summoning, participation, working agenda, deliberations, synthesis and notification of the decisions taken by the council, and concerns both the Plenum and the council of ministers for economic issues.

In the second area the *Regimento* establishes how the decision-making process must be organized, its procedures and routines. Based upon these regulations we can consider the following fundamental steps:

- Sending, receipt and examination;
- Circulation;
- Schedule and deliberations of the council of ministers;
- Promulgation and countersignature;
- Publication in the *Diário da República*.

We shall thereby follow the same methodology of approach in these pages.

III. Sending, receipt and examination

5. The issue of initiative in legislating has already been addressed in previous sessions, at least from the animus legislandii's point of view. It was then mentioned that there is no substantial difference between the decision, preparation, writing and examining of a diploma conceived at a ministry and another emerging from the Presidency of the council of ministers.

For the purpose of analysis one shall consider the moment when a project's diploma is received to be the beginning of the project's terminal stage, regardless of its origin.

6. Therefore, and no matter its origin, the project must be sent to the office of the state-secretary of the Presidency of the council of ministers, accompanied by some elements concerning its structure and contents.

Consequently, besides being written in the appropriate type of paper, it must be sent together with the following (as mentioned in pt. 14.1 of the *Regimento*):

- A synthesis of its contents;
- Legislation affected by its approval;
- Specific article of the government's program related to the matter;
- Informative short-version to be sent to mass-media;
- The opinions demanded by law nr. 41/84, dated the 3rd of February, in case of creating or re-modelling public services (currently a duty of the ministry of Finance);
- Mention of participation or previous audition of all entities with these legal or constitutional duties, namely the regional governments in case of diplomas to be applied in the autonomous regions (Madeira and Azores).

The short-version should contain not only information justifying the proposal, but also referring the human and financial resources required to its implementation, as well as the eventual need to issue supporting legislation. A reference to its connection with the policies of the Common Market would also be appropriate.

This document aims at being a thorough gathering of elements, allowing the centre of government to have a picture as complete as possible of the why's and what for's of the proposed measures. This information is also pertinent to non-proponent ministers.

7. One step whose character has remained unchanged since the beginning of the decade is the fact that a diploma must always be submitted by a minister. In fact, one can read in the *Regimento* of the council of ministers, pt. 13.1, the term "proponent minister"; that attribute is out of reach to secretaries and undersecretaries of state. Even if one of them takes the initiative, the proposal must always advance through the minister in line.

8. It is extremely important to underline here that all projects shall be signed by the ministers involved in the matter, and thus equally proponent. Basically, it is a way to avoid that certain decisions should be taken at the highest level when an interdepartmental solution is possible; it contributes towards reduction of the flow of issues to be handled by central government, and reduces the effect of split opinions, sometimes quite time-consuming and conflict-conducting.

9. Once the project is received at the office of the state-secretary of the Presidency of the council of ministers, it is also registered at the general-secretariat of the PCM. At this stage a reference number is given to the document, which will identify it all through the path conducing to its publication in the *Diário da República*.

10. Back to the office of the state-secretary of the PCM after been registered, the project is then submitted to a four-folded examination aimed at verifying:

- The compliance with elaboration routines;
- Accordance with the government's program;

- Its constitutionality;
- Its standards in technical-legal grounds (structure, normative dignity, etc).

11. I shall not dissert on the subject, which is extensively treated in volume II of this course, prepared by the INA (National Institute of Administration) and Dr. Bráz Teixeira. However, I would like to refer that the portuguese traditional solution consisting on giving to the office of the state-secretary of the PCM the responsibility of its examination is not the one we favor most. It is, though, the alternative best adapted to the shortness of time available to complete evaluation procedures (5 days, pt. 16.1 of the *Regimento*).

Moving the cabinet for Technical and Legislative Support from the ministry of Justice to the Presidency of the council of ministers, where it was re-baptized Center of Technical Studies and Legislative Support, has not yet conduced to the definition of how it will fulfill its mission. The former experience does not seem to be of great help, since it had the character of an internal consultation service in the ministry of Justice.

This preliminary analysis can lead to the decision of having the document sent for appreciation to all members of government (if presented according to the mentioned rules), or devolving it to the proponents if standards are not met.

12. This analysis concludes the first step of the legislative process at the level of the Presidency of the council of ministers, which we presently labeled "Sending, receipt and examination". It is important, however, to make some considerations about aspects that emerged in a recent past:

12.1 In what concerns the level of preparation and matureness of the projects submitted for appreciation to the Presidency of the council of ministers, one must recognize that there is no such thing in portuguese governing tradition as a time-schedule for the legislative activity of the government if one ignores the few formal initiatives of central government (about 4% of the published diplomas in the 1st year of the present government). It is difficult to detect, in such a brief analysis, the elements which will specifically assure the implementation of the government's program.

12.2 Although not so much felt in one-party governments, the absence of efficient interdepartmental and interministerial co-ordination mechanisms is a major problem; this is perhaps due to the verticality of public administration and the fact that preliminary arbitration is seldom practiced.

12.3 We further question the inadequate legislation schedule at sectorial level, consequence of the absence of a global legislation schedule. Therefore, projects can come up at the wrong time or it can also happen that regulative instruments are not created in time to execute diplomas of higher normative character.

12.4 We consider the decisions of the council of ministers to be excessively formal in their legal formulation, partially due to a strict normative set of regulations (normative de-gradation mechanisms are non-existent).

12.5 One must also mention the insufficient knowledge the proponents often have about the level of decision required and, above all, the confusion sometimes verified between legislation and regulations.

We can now move to the next item.

IV. Circulation

13. When its circulation is approved, the office of the state-secretary of the PCM sends the project to the ministerial cabinets and also to the ministers for the autonomous regions, according to the relevance of the matter.

Presently this is done through a circular letter from the office of the state-secretary of the PCM. In the past identical means were used by the general-secretariat of the PCM, which was in charge of the process at the time.

We should also refer that the time of circulation shall not exceed 5 days after having been received at the Presidency of the council of ministers. The situation was otherwise in the previous government, where the circulation of the project should be concluded within 48 hours after that moment. It was

also otherwise at the time of the AD government (right-wing coalition), when its circulation was done simultaneously with the council's agenda in which they would be examined.

14. It is important to underline here that the longer the lapse between its circulation and "agending" is, the better the participation of each member of government in the legislative process will be.

The importance of this level of operations is to allow the non-proponent ministers to present their objections to projects in which they were not previously involved: global or sectorial, political or technical, of structure or of substance.

15. The comments or objections, as called in pt. 17 of the *Regimento*, should be sent within 5 days to the office of the state-secretary of the PCM and to the proponent minister. Excluding a total rejection of the project, alternative proposals should be draughted.

The proponent minister shall, in his turn, assume a position about the objections and comments within 3 days of receiving them and must, within the same period, present it to the state-secretary of the PCM.

16. One can understand that the network of relations hereby established requires arbitration at central level: at this stage it is the assistant-minister for Parliament issues who is in charge.

This role is fully covered in pt. 17.4 of the *Regimento* when it predicts the possibility of that member of government convoking a meeting of state-secretaries, whose only purpose would be to study the projects to be submitted to the council in which an agreement between the members of government was unreachable by other means.

"A propos", one could mention that these meetings of state-secretaries have little to do with those verified at the time of the VIII constitutional government, and were (in our opinion) an initiative to be praised: they attempted to facilitate the work of the minister's Plenum. With this first experience, alias a copy of what happens in the neighboring country, one pretended to obtain a preliminary approval of diplomas later formalized by the

Plenum; now, its more a matter of arbitration. In other words, the reaching of an agreement has been replaced by the overcoming of disagreements.

17. Having the project passed a first test by the absence or overcoming of criticisms, it is ready to be put in agenda. We shall treat this item now, not without adding that if some of the questions above mentioned should remain unsolved they could represent a source of problems at the stage of circulation. For instance, a deficient interministerial co-ordination can conduce to transferring to this level the solution of technical and/or formal legal divergences.

V. Schedule and deliberations of the Council of Ministers

18. "Agending" consists in defining the daily schedule of the council of ministers. It is demanded both that the diplomas are ready to be submitted to the council's appreciation and that an act of will of the Prime-minister shall include it in the daily agenda.

To determine the contents of the agenda the Prime-minister meets every thursday with the assistant-minister for Parliament issues, after the regular session of the council. He in his turn commands this operation, which formally goes signed by the state-secretary of the PCM. The latter also assures its distribution to council members at least 48 hours before the scheduled meeting.

19. The number of agendas is not pre-determined. However, rigid discussion contents are defined in pt. 18.2 of the *Regimento* as follows:

- One part dedicated to global and sectorial political analysis;
- Another relative to the discussion of the projects over which there was a consensus at the previous stages;
- A third part concerning the diploma projects who did not assemble a consensus.

To this third part are added, in practice, the issues that were not previously included in the agenda (the so called "taken in hand" issues): only the Prime-minister can authorize their discussion without having gone through the usual deliberation channels.

One has to mention here how surprisingly high the percentage of these points is, compared to others, in council meetings. In fact, the higher this percentage is the more unprepared the decisions are, and the more time-consuming the meetings become.

In the present government, during its first year of activity, this percentage is close to 15%: a low value when compared to former governments, but still quite high.

20. We inform, by the way, that the meetings of the council of ministers can be ordinary or extra-ordinary, being those usually held every thursday morning. They are conducted by the Prime-minister, or in his absence by the minister of State.

The council meets by initiative of the Prime-minister, formally convoked through the distribution of the agenda by the state-secretary of the PCM. These meetings have the participation of the Prime-minister, all the ministers and the state-secretary of the PCM (who does not have the right to vote, and whose presence can be denied by the Prime-minister).

The ministers for the autonomous regions can also participate if convoked, when the issues are of interest to their regions. The secretaries of state can similarly be present, if that is specifically indicated by the Prime-minister.

21. The deliberations of the council of ministers are valid provided the necessary "quorum" has been met (simple majority of council members, according to the *Regimento*); ministers can be represented by specially appointed state-secretaries or even, in their absence, by a member of government appointed by the Prime-minister.

These decisions are reached by consensus or voting, and it is to admit on the last case that a majority based on the Prime-minister's position should be required (the *Regimento* is not specific about this situation).

22. The type of decision the council must reach is mentioned in the *Regimento*, pt. 19.1, which states that it must be one of the following three:

- Approval of the project;
- Rejection of the project, shortly designated by "*retirada*";
- Postponement.

Therefore we have in this government a considerable reduction on the type of decisions. In previous governments we could find decisions of type "approved in general", "approved, further elaboration by minister(s) Y", "approved for discussion with social partners", etc.

If one compares the volume of decisions according to their type, one finds for example in the IX constitutional government the following statistics:

- 44,95% approved;
- 21% approved , with final version to be elaborated by...
- 30,1% postponed;
- 1,8% rejected.

On the present government, and during the same period, the percentages were:

- 73,5% approved;
- 23% postponed;
- 3,5% rejected.

23. One elaborates a summary of the council meetings, the so called *Sumula*, in which the decisions taken are mentioned. A short version of this document is distributed to the members of government (it is actually just a list), since the authentic documents filed in the Prime-minister's Office and also in the office of the state-secretary of the PCM (their author) are written in an extended version.

24. The decisions of the council are made public to mass media through a communique of the assistant-minister for Parliamentary issues.

25. The whole process is conducted by a rule of confidentiality of information and decisions taken (or to be taken), as well as by a government solidarity

principle which determines that all deliberations must not, after being approved, be contested by any member of government (independently of his position during the examination). On the contrary, he or she should defend it.

26. We can hereby indicate some of the problems that can emerge at this level.

One of them concerns the fact that some of the mentioned routines are not followed. We have stated that the so called "taken in hand" issues have tended to become the rule instead of being used occasionally. This happens more frequently when central government has less power to block this path, at the expense of the meeting's schedule.

Another is related to the possibility of objections being raised after the circulation stage of the project. It is, of course, a subversion of the decision making's support system, which one should try to avoid.

A third problem is the presentation of non-relevant or secondary initiatives, or even the non-assumption of individual responsibilities (the so called "umbrella" effect). This happens specially in moments of little "collegial" atmosphere among council members, or else in the case of weakness from one particular member of government.

One last tendency that arises is the immoderate increase of the agenda's dimensions as a consequence of inadequate scheduling of legal measures, and also due to excessive legal formalization of council decisions.

The abundance of decision types reflects an absence of efficiency within the decision system, due to the non-existence of previous arbitration.

We shall now go over to promulgation and countersignature.

VI. Promulgation and countersignature

27. The final procedures concerning legal diplomas approved by the council involve several operations, as for example the assembling of signatures,

sending both law-decrees and regulatory-decrees to promulgation by the Presidency of the Republic (who must also sign simple decrees), sending to Parliament law or resolution proposals from the Presidency, collecting the countersignature of the Prime-minister when necessary, etc.

These operations are conducted by the office of the state-secretary of the PCM with the participation of the general-secretariat of the PCM, who sends and receives the diplomas from the Presidency of the Republic; however, the diplomas to be handled in Parliament are conducted through the office of the assistant-minister for Parliamentary issues.

The assembling of signatures is either done at the council where the diplomas are approved or at a later stage.

The assembling of the Prime-minister's signature, namely in terms of countersignature map, is generally obtained in a direct dispatch to the state-secretary of the PCM, which usually takes place on wednesdays. This procedure is also valid in the case of presidential or parliamentary diplomas which have not been countersigned.

28. The President's attitude towards the diplomas he receives can be one of the following:

- Signature and promulgation;
- Veto the document;
- Assignment to the Constitutional Court, to evaluate its constitutionality.

This is a subject which will be further treated during this course, so we shall abstain from doing it now.

Once promulgated or signed the diploma returns to the council's Presidency, to be numbered and sent to publication (when necessary).

VII. Publication in the *Diário da República*

29. In constitutional terms (article 122, nr.2 of the Constitution) a diploma is legally valid only after publication.

On top of that, publication is not only necessary for the internal legal order but also for the international legal order, in some cases. Here we include the diplomas which imply a notification to the European Communities, as proof of acting accordingly to Community directives.

30. It is a task of the general-secretariat of the PCM to send to the National Printing Office (*Imprensa Nacional*) the authenticated copies of the texts to be published in the 1st series of the *Diário da República*.

After publication, the general-secretariat of the PCM registers the fact and files the original documents. We possess in these files all the original documents since 1933.

31. One problem which is frequently raised in connection with the publication of legal diplomas is the tendency (unfortunately present in all governments) to edit supplements to the *Diário da República*.

In fact, existing problems at the National Printing Office hinder the publication and distribution of diplomas in the same day they are received. These problems are due not only to the enormous amount of paper to be set up and printed, but also to the sometimes complicated graphic operations involved, careful proofreading and deficient graphic quality of the available copies.

Therefore, in normal circumstances no diploma manages to be published in the 1st series of the *Diário da República* until 5 days after being sent to the National Printing Office: this fact represents a serious constraint to the political and legal efficiency of the measures which require almost immediate publication.

Those difficulties together with this need determine the resort to that unfortunate alternative, which is according to us excessive, inefficient, anti-economic, and thus to be avoided.

To illustrate the use and abuse of this subterfuge, one can just refer that in 1986 alone 174 supplements to the 1st series of the *Diário da República* and 239 supplements to the 2nd series were published, in a total of 300 editions of that publication.

However, except in the case when the distribution is done in the same day the diploma is issued, this process proves to be inadequate: the jurisprudence existing in our courts establishes that a diploma's legal implementation begins when the official journal is distributed.

It is also anti-economic because, with no improvement in efficiency, some millions of escudos are used every year to pay its edition to the National Printing Office (its a mandatory fact with the publication of the normative dispatch nr.110/86 of 30/12). Besides, we are not including the extra costs due to changes in graphic programming.

32. Apart from these final procedures, the processing of the adjustments to the diplomas published in the 1st series of the *Diário da República* is also centralized at the general-secretariat of the PCM.

Being this item further treated in this course, we shall only mention that these procedures imply organizing the receipt of requests, their examination after re-opening the respective file, elaboration of the authorized adjustments, their monthly publication and register and, finally, filing the process again.

VIII. Final comments

33. First of all, I would like to say that the summary description of the final procedures in the official legislative process should not make us forget that, although less elaborate, the question of diploma execution is equally important.

The need to write a report every third month, as specified in pt. 21.1 of the *Regimento*, is a most welcome innovation, as are the semestral general meetings of the government presided by the Prime-minister.

34. Another aspect which occurs to me is related to the intervening power that central government needs in order to control attempts to subvert the pre-established routines. This would be the first step towards a non-functional hierarchy among the ministers.

35. A third consideration concerns the balance that must exist between political imperatives (usually implying hasty decisions and overruling pre-defined stepwise procedures) and other needs more related to objectiveness, maturity and pondering. These must preside to all acts creating general and abstract laws to be imposed to the citizens.

The 54 day deadline from receipt to publication of the projects is rather short compared to the slow legislative procedures in some european countries. This rhythm can be positive only if pondering and judiciousness are present at elaboration level. Many laws can be lost due to hasty formulation.

36. One should also mention the end of a myth, namely that computerization is the decisive factor in changing a humanized organization such as the one that exists to support legislation activities.

This does not imply abandoning modern information technologies, but on the contrary underlines its support role in the decision making system. It allows thereby a quicker and easier supply of the adequate information elements, the statistics of the process and the bureaucratic support operations.

Presently, the available informatic equipment at the general-secretariat of the PCM enables us to follow the life of a project, provided it has been registered.

All referred material operations are memorized by the computer. That allows us at any moment to give information and make lists of different kinds, global or departmental, in short: a virtually unlimited number of combinations.

37. A fifth and final consideration consists in recognizing the need to have technically well equipped personnel at all intervention levels of the legislative

process. This comprehends administrative units (an often forgotten source of legislation initiatives), ministerial offices and central government.

I sincerely hope that this informal talk will help to accomplish that goal.

**THE INSTITUTE OF INFORMATICS AND THE
INFORMATION MARKET OF PUBLIC ADMINISTRATION**

by Dr. Luís Vidigal

February 1990

Translated by J. Pedro Alcântara

Project: INFOJUR

The Institute of Informatics has for the past three years been dealing with this new technological intervention area within public administration, regarding the information market.

It all started with INFOJUR aiming at building an integrated database of legal information, based upon an active co-operation between the various institutions which produce normative information in the context of governing our country. This would by no means question their future co-ordination with legal information systems of jurisprudential and doctrinaire nature already created or at project-level, specially those related to the ministry of Justice.

This idea was generally well accepted by the services, but its practical implementation has not proved to be easy.

Since it is a project with interdepartmental characteristics and national impact we tried to obtain the highest possible political back-up from the government, along with the strategical dimension that such a project requires.

In formal terms INFOJUR began with the resolution of the Council of Ministers dated the 26th of May 1988 creating a commission led by the State secretary of the Presidency of the Council of Ministers and co-ordinated by the director of the Center for Technical Studies and Legislative Support (CETAL). It also included representatives from the Institute of Informatics (I.I.), the Cabinet of Documentation and Comparative Law of the Attorney-general's Office and the Cabinet of Research and Planning of the ministry of Justice, and its purpose was to study and propose (in three months) the necessary solutions to install this database.

The government instructions concerning the INFOJUR database were as follows:

- Inclusion of all normative acts which, according to the law, should be published in the 1st Series of the *Diário da República*;

- Accuracy of information contents, namely through exhaustive treatment of specific legislation by the institutions more directly related with its implementation, allowing for the emergence of sectorial sub-bases complementary and subordinated to the main base;
- Permanent up-to-dating of information;
- Easiness of approach and broad access to public and private users.

The commission began its work in October 1988 and delivered a detailed report to the government in April of the following year: it contained not only a diagnosis in depth of the present situation and the definition of the legal, informatic and organizational characteristics of the future database, but also three possible paths for project INFOJUR.

This report has remained unanswered, and the government gives no signal of approval or rejection of the proposals which would allow the institutions involved to feel more secure, shielded by a strategy politically sponsored from above.

Faced with this political vacuum we decided to advance pragmatically with the project last August, basing ourselves on a praxis of type "bottom up". However, we want to underline the strong strategical conviction which has accompanied INFOJUR from the very beginning.

In fact, we have performed a massive charging of the main database since the end of last year, still on a temporary basis, formed by the transcription of more than 60 thousand legal references located at the General-secretariat of the Council of Ministers.

At the same time we began to "charge" REGTRAB, under the responsibility of the Technical and Scientific Information Service of the ministry of Employment and Social Security, formed by approximately 10 thousand references in the area of employment regulations.

Apart from the legislation published in the *Diário da República* which represents the most essential source of legal information in the main database, and the employment regulations which is no doubt the most important base with sectorial characteristics, we systematically persevered in feeding in the circulars from the General-directorate of Public Accounting (the first experience with "integral text" within INFOJUR), and proceeded with the

studies to expand the database to the jurisprudence of the Supreme Audit Institute of Portugal.

Finally, I wish to announce that we are doing some testing in co-operation with the EEC (Common Market), with the purpose of importing the CELEX database to our system and creating access conditions in INFOJUR environment.

Project: INFOCID

The second intervention area of the Institute of Informatics in the information market was the idea of creating an integrated database for public information, called INFOCID, equally with inter-departmental and co-operative characteristics, whose purpose would be to put at public disposal in general and institutions in particular clear and organized information on the rights and duties of the citizens as well as on the procedures and formalities which they must follow in their relationship with public administration. It also includes the location and service procedures of each institution.

This system would be sustained by a database of Videotex pages and could, under certain circumstances, be connected with resident information in databases of type ASCII (as for example a list of all state institutions, under testing by ORACLE).

This project tried from the start to be a Videotex version of the "citizen's Guide" recently published by the General-secretariat of the Presidency of the Council of Ministers, as well as to co-ordinate the efforts of several institutions (DGAP, SMA and SG-PCM), towards creating a single database of public services and recuperating some of the richest and most reliable records to be found in public administration, *Anuário dos Serviços Públicos* (directory of public services), *Relação dos Organismos de Estado* (list of State institutions), etc..

We also tried here to obtain political sponsorship from the Secretariat for Administrative Modernization, taking advantage of the strategical priority conceded to all forms of communication with the user (or client).

The political success of this project is yet to be confirmed, because it has been awaiting approval since last summer a project of resolution of the Council of Ministers creating a commission which would comprehend the General-Secretariat of the Presidency of the Council of Ministers, the Secretariat for Administrative Modernization and the Institute of Informatics (I.I.), whose purpose would be to define:

- The structure and functionality of the system, namely which organisms and institutions it would integrate, and their respective areas of intervention.
- The relations to be established between the various producers of information, the coordination unit and the institution responsible for the informatic support of the whole system.
- The areas of information to be made available.
- The fragmentation of the various public services addressed by the system, enabling us to create the retrieval language more appropriate to each one of them.

Our wish is that the General-secretariat of the PCM would assure the coordination of the system, the Secretariat for Administrative Modernization would be the sponsor, the Institute of Informatics (I.I.) would support the conception, exploitation and maintenance of the computer system, and all the affected institutions would (according to their specific fields) produce the necessary information to "charge" (fill up) the database.

We chose to use a Videotex page editing and management system of national conception, and an equipment of universal characteristics (UNIX): it could be used a replica of this logical support in a MS-DOS environment to perform remote page edition. The architecture of this system is based on a decentralization of page editing, making the conception and treatment of information as close as possible to its sources, without the need of big investments for the "producer" institutions.

The co-ordination, to be conducted within the sphere of the Presidency of the Council of Ministers, will try to guarantee a standard presentation of the information, namely through standardizing the way the Videotex pages are written and treated (size, coding of characters and symbols, etc.).

We wish that the information research should be conducted through "tree-like" menus, or of document-type, i.e., through descriptors adapted to the citizen's needs.

We want with INFOCID to be able to give a clear and concise answer to the average citizen when asking himself how to face public administration: 1) What to do?; 2) How to do it?; 3) Where to go?

The Institute of Informatics plays the "host" role of the system and mobilizes efforts to equip and test the products, attempting to achieve a higher level of skill in this area. Prototypes have been developed, communication alternatives were tested (including a "gateway" with Transdata), new possibilities of edition and connection to databases ASCII were essayed, etc.

The I.I. is prepared to run in experimental terms a real database, giving the opportunity to all producers of information who should wish to reach the average citizen to commence treating and editing Videotex pages. This would represent less technological constraints to them, since the human and financial investments are within reach to all public institutions concerned with diversifying and improving their contact with the citizens.

Project INFOCID's goal is to become complementary to the general policy of public information which includes mass media, paper products (brochures, guides, etc), telephone ("the blue line"), correct public attendance ,...

The INFODOC database

For the moment we shall abstain referring the "host" role of the I.I. to explain what we have done as producers of specialized information in the area of information technologies.

We started in 1985 to computerize our Documentation and Information Center, conceiving and developing a home product which proved to be most valuable to our internal needs: the SIIRD.

However, the need to abandon one of our operative systems forced us to review the system as a whole and to give our preference towards transferring

all treated information (around 10 thousand documents) to UNIDAS 1100 environment, where INFOJUR also is.

This database, baptized INFODOC, provides new alternatives in terms of search, automatic indexation of titles, authors, etc. It comprehends all information treated since 1978 concerning relevant and up-to-dated documents in the area of informatics, but also in administration, management and telecommunications.

INFODOC can be searched through a list of describers, and it is in preparation a multilingual informatic "thesaurus" with its own characteristics (quite specific); at the same time we are contributing to a more generic national "thesaurus" which is under preparation within INCITE, with the co-operation of several institutions of the branch.

We shall hereby refer that 86% of the 10 thousand documents included at this moment in INFODOC were edited in the 1980's, which speaks for itself in terms of the level of pertinence of this bibliographic database.

Due to some reconstruction work going on this year at the building where the I.I. is located, affecting particularly our Information and Documentation Center, it will not be possible for the external public to have access to the bibliography stored there. However, we hope to soon be able to guarantee outside access to the INFODOC database, using the same means that should be put at the disposal of INFOJUR, although in substantially different conditions than the so called public interest bases.

A Taxonomy for the Information Market

We suggest an institutional taxonomy to the information market resulting from the fusion of the traditional actors performing in this area: producers, hosts (servers), distributors (brokers), communication operators and consumers, as well as the characteristic trilogy of project management, i.e., the sponsor, the leader and the system supplier.

It has already been mentioned the figure of the *sponsor* in connection with the role of members of government and of the highest executive authority of each

institution in the INFOJUR and INFOCID projects. The existence of a sponsor assures the direct participation of highly qualified administrators in the definition of the system's main strategic options.

The second role proposed is the *coordinator* or system leader who, in fact, is the daily administrator of the several project components, assuring that the goals, quality and schedules are accomplished.

The third figure proposed is the *producer of information* (both at central and sectorial level), who would assure the gathering, selection, treatment and feeding of information, guaranteeing the quality and pertinence of the database, and thus becoming the heart of the system.

The *host* ("server", "umbrella services") represents the fourth role played in the system, guaranteeing its technologic infrastructure. He shall administer the computer equipment and the logic supports, assuring the safety and stability of the databases and promoting their permanent technological modernization.

The fifth role played in the information market is the one of the *distributor* (or broker), who guarantees the promotion of products and services, stimulating the demand from specific markets and identifying new client or consumer needs.

The sixth actor is the *communications operator*, who since the emergence of public networks of data communication has played a decisive role in the success or failure of getting access to databases.

The old analogic infrastructures of oral communication seem to be poorly adapted to datacommunication, and this is a worldwide problem facing the information market in spite of the progress registered internationally by digital networks, optical fibers and satellite transmissions.

The *computer supplier* can also play a decisive role in the information market, although we must refer that this area has not yet attracted in an enthusiastic fashion all the manufacturers of equipment and logic supports. The investment in the backing-up of the clients and their needs in this area deserves a more strategic attention in the future: otherwise, opportunities and markets which have a predicted quick expansion could be lost.

At last but not least we mention the *consumer* of information as the reason of being and the destination of the whole system. The distribution circuits should possess an enormous capacity of attentiveness towards consumer behavior and their specific information needs.

Some of these roles could be played by a single actor. For instance the coordinator could simultaneously assume the roles of sponsor and distributor, the host could also play distributor, the communications operator could play host, etc. The roles can be maintained separated enough to allow for taking advantage of their specialization, and at the same time integrated enough to provide a smooth and efficient functionality of the system.

Why a host service at the Institute of Informatics?

The I.I. is since 1987 the central coordinator of information technologies in public administration, and also has normative national competence in this area delegated by the Portuguese Institute of Quality.

Previously has the I.I. been since 1977 in charge of the conception and development of most of the informatic applications of the State's financial sector, which gave it a greater credibility. This is confirmed by the internal education of dozens of technicians and by the value that they quickly achieved in the public and private employment market. This demand has pressed us to perform a permanent "fertility rite", which besides creating some difficulties has helped to maintain the Institute alive and dynamic, permanently facing new challenges and responsibilities.

Apart from the public administration's consulting and technical assistance services the reform of public accounting and the information market sector represent two of the main challenges which presently mobilizes a big share of the Institute.

The information market is part of a broader development strategy of the I.I. as an "infocenter", i.e., a way of supporting the "ultimate user" in the management and exploiting of his own data through 4th generation instruments, accessible questioning languages and friendly and "intelligent" interfaces.

In a house of this dimension great scale economy is possible, and almost always a specialist is to be found who can help or provide continuity to a user's idea or desire. Concentrating efforts by sharing a common host makes possible more rentable investments, the development of research initiatives and improvement of new instruments and facilities, as well as establishing ways of access and search.

In a country of poor resources like ours, co-operation and sharing of tasks or responsibilities within a broader integrated system can prove to be a good solution towards being competitive in more powerful markets, maybe even at international level.

To concentrate in a host service a large stock of information forwarded by several sources can represent increasing credibility to their databases, if quality and pertinence are guaranteed.

On the other hand, one can split markets by sharing databases concerned with the same information area or through co-operation towards achieving a product of common interest.

The Institute of Informatics operates within three main technologic/informatic areas:

- 1) *Technologic promotion*, where the information market sector is inserted.
- 2) *Information systems*, where the applications and databases are conceived and put into practice.
- 3) *Production*, where the applications and databases are managed and explored.

The way in which most projects are functioning enables us to obtain the skilled participation of technicians from different areas, such as planning of information systems, conception and development of applications and databases, telecommunications, supports to logic products, documental and technical education, support in organizing account books and selecting equipment and products, re-organization studies, database administration, etc..

A group of more than one hundred highly-qualified technicians allows us to have high expectations about the future of the projects mentioned above,

however high the rotation of personnel may be: that is something we have learned to live with, and confirms what is happening around the world in what concerns the computer technician's market.

In the still young portuguese information market the host can be quite a safe umbrella, comprehending apart from demanding technological tasks, specialized information, promotion and consultation services.

What is then the interest of the Institute of Informatics in this area?

First of all its a question of accomplishing its mission, i.e., " promote administration modernization through information technologies". Secondly, we are aware of the potential of information technologies for the 1990's, where surprisingly high growth rates are predicted specially when compared with growth rates of other sectors. Thirdly, because of the growing internal awareness of technical-and-scientific documentation related activities. These have been gradually acquiring a more important status and credibility both within and outside our institution.

In what concerns the motivation of technicians and leaders as well as the internal mobilization of resources to the information market, I want to state that it was not at all easy to reach our present position. The institute's technological "nucleus" was strongly oriented towards applicability and computerization of the main systems of the State's financial domains.

It was the overflowing of external boundaries (the publicity around some of the projects was considered premature and hasty) which made the involvement of the Institute of Informatics and some of its partners in the information market world quite irreversible.

Without wishing to extend my comments on the issue of the synergy between the public and private sectors, i just want to say that it was not at random that we chose two segments of this market: *legal information* and *general information* to the citizen. These are the two areas which, according to us, should become our main concern (on behalf of the State), and can be treated and commercialized in special conditions justifying their monopoly by public administration.

Although we want to privilege these two projects (INFOJUR and INFOCID), we are willing to give assistance in other areas; one must safeguard, however, the market's general rules as well as their principles (values).

I also want to mention the recent efforts in preparing an easy access by the user to the existing databases and to the ones at "charging" or project level.

It is in fact in its terminal stage a friendly and "intelligent" interface to PC/AT (expanded to 2 MBytes) for access to all databases of type ASCII resident at UNIDAS 1100 via X25, not to mention the 4th generation environment now at the disposal of the information producers.

Finally, we rely on the public communication's operator to ameliorate and stabilize the circuits of data transmission, which no doubt are decisive factors to the success of the whole system.

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In Portugal, the INFOJUR project has been launched to enhance the national, legal information system. In this report, this project and its place in the legal system of Portugal is discussed. Though the report discusses the Portuguese situation, also more general problems of solving problems related to codification, consolidation etc of the legal source material is discussed.

In addition to the main report, a paper by Dr França Martins, Secretary General of the Presidency of the Council of Ministers on "How laws are made", and Dr Luis Vidigal of the Institute of Informatics on the role of this institute in the information market of public administration are reprinted as annexes.

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