

Sobre a repartição de competência no Tribunal de Justiça da União Europeia

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O artigo analisa criticamente e também sob a perspetiva da sua reforma, a repartição de competência entre os três tribunais organicamente pertencentes à União Europeia – o Tribunal de Justiça, o Tribunal Geral e o Tribunal da Função Pública –, que o Tratado de Lisboa agrupa sob a denominação algo equívoca de Tribunal de Justiça da União Europeia.

Controlo jurisdicional de concursos e exames Pode uma exceção alterar a teoria?

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Os complexos limites do controlo jurisdicional de concursos e exames impõem ao juiz administrativo uma dúvida metódica sistemática, constitucionalmente orientada, que lhe permita, com prudência e sabedoria, dizer o indizível, deslocando os referidos limites em direção à tutela dos direitos fundamentais e à qualificação jurídica dos factos. Há pelo menos um caso, quando os exames e concursos versam sobre matérias jurídicas, em que a qualificação (jurídica) dos factos *antecede* a sua apreciação pela Administração, o que na opinião dos Autores abre novas perspetivas de controlo jurisdicional deste tipo peculiar de atos administrativos.

Ministério Público na área cível: a extinção judicial de fundações (art. 192º, nº 3, do C. Civil)

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Procurador da República

A Lei 24/2012 de 9/7, introduziu um nº 3 no art. 192º do C. Civil, consagrando duas causas de extinção das fundações - quando o seu fim seja sistematicamente prosseguido por meios ilícitos ou imorais (al. a) ou, quando a sua existência se torne contrária à ordem pública (al. b).

Ambas as causas de extinção já existiam na anterior redacção do art. 192º do C. Civil (no nº 2, al. c) e d), pelo que, a novidade consiste na atribuição de legitimidade oficiosa ao Ministério Público para intentar a acção.

O artigo inicia-se com uma introdução em que se define o conceito de fundação, salienta-se a existência de normas especiais sobre o regime jurídico das fundações e a legitimidade oficiosa do Ministério Público para intentar a acção.

De seguida, analisa-se a extinção de fundações por decisão judicial e, por fim, comentam-se as duas causas de extinção previstas no art. 192º, nº 3, als. a) e b) do C. Civil.

O fundamento público do processo de insolvência e a legitimidade do titular de crédito litigioso para requerer a insolvência do devedor

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In the Portuguese case law it is debated the interpretation to be given to art. 20, paragraph 1, of the Portuguese Insolvency Act. In particular, there are doubts as to whether the creditor whose claim is being challenged by the debtor is allowed to file a petition for the insolvency of the latter. As a matter of fact,

the insolvency proceeding, besides being a means to ensure private interests, is also a means to ensure more general interests, namely those who associate to the protection of credit as an asset of a public nature. In this light, we argue that the circle of individuals entitled to file for the debtor's insolvency is an extended one and that the holders of challenged claims are not – should not be – excluded from it.

“Dores de crescimento” – algumas dúvidas à volta do processo especial sumaríssimo e contributos para uma clarificação prática

Júlio Barbosa e Silva

Procurador-Adjunto

O apelo às dores de crescimento neste âmbito surge na sequência da crescente importância prática e hierárquica que tem vindo a ser dada à forma de processo especial sumaríssimo que, há bem pouco tempo era dada como morta e dispensável no âmbito do CPP.

Esse crescimento gera novas questões e problemas jurídicos que aqui se tentam compilar, sendo que muitas vezes se pode estar a fugir, na aplicação prática, ao figurino e desenho legal que estaria na mente do legislador.

São equacionadas soluções para problemas práticos e sugestões para eventuais alterações legislativas que tentam dar um papel cada vez mais importante na forma de fazer justiça em Portugal, que foge ao figurino clássico da justiça adversarial na “barra”, sendo que a justiça pelo processo é, hoje mais do que nunca, uma relevante forma de alcançar a justiça no caso concreto.

A fraude carrossel em sede de IVA – Conceitos e contexto europeu

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O dever fundamental de pagar impostos e de uma cidadania eticamente responsável interpela os poderes públicos (tribunais e autoridades tributárias) para um combate firme à criminalidade tributária, sobretudo quando a conduta do infractor implica uma especial danosidade para o erário público e para os contribuintes cumpridores (ex: obtenção indevida de reembolsos de IVA, susceptíveis de causar a diminuição das receitas tributárias).

O objectivo deste artigo consiste numa breve revisão metodológica do funcionamento da chamada “fraude carrossel” em sede de IVA, das medidas adoptadas ao nível da União Europeia e Portugal de combate à fraude, e da forma como sujeitos passivos de IVA podem ser responsabilizados pela participação no crime de fraude fiscal (mesmo que de forma involuntária), tipificado, entre nós, no artigo 103.º, do Regime Geral das Infrações Tributárias.

The allocation of jurisdiction within the Court of Justice of the European Union

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The article provides a critical analysis of the allocation of jurisdiction among the three courts organically pertaining to the European Union – the Court of Justice, the General Court and the Civil Service Tribunal –, and which pursuant to the Treaty of Lisbon are grouped under the somewhat equivocal designation of Court of Justice of the European Union. The analysis provided also addresses the reform of the latter.

Jurisdictional control of competitions and exams Can an exception change the theory?

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The complicated restrictions imposed on the jurisdictional control of competitions and exams compel the administrative judge to adopt a systematic, constitutionally oriented, method of doubt which would enable him to say the unspeakable, with prudence and wisdom, by shifting the said restrictions towards the protection of the fundamental rights and the legal classification of the facts. There is at least a case where exams and competitions deal with law subjects, where the classification (legal) of the facts is *preceded* by its assessment by the Administration. According to the authors, this provides new perspectives on the jurisdictional control of this peculiar type of administrative acts.

The Public Prosecution Service in the field of civil law:
the judicial winding-up of foundations
(paragraph 3 of Article 192 of the Civil Code)

João Alves

Prosecutor of the Republic

The law no. 24/2012 of 9/7 introduced a paragraph 3 to Article 192 of the Civil Code. Two grounds for winding-up foundations are enshrined in that paragraph: first, the means used for the furtherance of its purpose are systematically illegal or immoral (subparagraph (a)) or, second, the foundation is contrary to the public order (subparagraph (b)). Both grounds for winding-up had already been incorporated into the previous text of Article 192 of the Civil Code (in paragraph 2(c) and (d)), thus the newness consists in the fact that the Public Prosecution Service has been granted legitimacy to initiate proceedings *ex officio*. The Article begins by defining the concept of foundation; it outlines the fact that there are special rules for the legal framework underpinning the foundations, as well as the fact that the Public Prosecution Service has been granted legitimacy to initiate proceedings *ex officio*. It then examines the winding-up of foundations decided judicially and, finally, the two grounds for winding-up provided for in Article 192(3)(a) and (b) of the Civil Code.

The public basis of the insolvency proceedings
and the right of the holder of the disputed claim
to petition for the debtor to be made bankrupt

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The Portuguese case law discusses the possible meanings to be given to Article 20(1) of the Portuguese Insolvency law. In particular, there are doubts as to whether the creditor whose claim is being challenged by the debtor is

allowed to file a petition for the insolvency of the latter. As a matter of fact, the insolvency proceedings, besides being a means to ensure private interests, it is also a means of ensuring more general interests, namely those associated with the protection of credit as a public asset. In the light of all this, in our view the persons entitled to petition for the debtor to be made bankrupt form a large group and the holders of disputed claims are not – should not be – excluded from it.

“Growing pains” – some doubts about the special procedure, which is extremely simplified and speedy, and contributions towards providing a practical clarification

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The expression “growing pains” is used herein due to the increasing practical and hierarchical importance given to the type of special procedure, which is extremely simplified and speedy and which until just recently had been considered as belonging to the past and as being dispensable within the scope of the Code of Criminal Procedure.

In this article, an attempt is made to list the new legal issues and problems caused by that development. But in implementing it, it is often possible that one deviates from the legal concept the lawmaker actually had in mind.

The article considers solutions for practical problems as well as suggestions for possible legislative changes seeking to give an increasingly important role to the way justice is done in Portugal. A way which deviates from the classic concept of adversarial justice in court, but today justice achieved through the procedure is more than ever an important way to achieve justice in a *sub judice* case.

VAT Carousel Fraud – Concepts and European context

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The fundamental obligation to pay tax, as well as the duty to be an ethical responsible citizen challenge the public authorities (courts and tax authorities) to firmly fight against tax crime, especially when the offender's behaviour particularly prejudices the public purse and the taxpayers who meet their tax obligations (example: obtaining undue VAT refunds which can lead to a tax revenue loss).

This article aims at briefly and methodologically examining, first, how the so-called "VAT Carousel Fraud" works, second, the measures adopted by the European Union as well as by Portugal to fight fraud and, third, the way those treated as taxable persons for VAT purposes can be held responsible for their participation in the commission of the offence of tax fraud (even if involuntarily), recognized as such under Article 103 of the Portuguese General Tax Offences System.