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Abstract: This study analyses the case management under the Portuguese Civil Procedure Code. The theme is developed considering the main cases in which the judge should act as case manager, as well as the legal regime that this jurisdictional activity obeys.

Key words: portuguese civil procedure; case management.

Under the civil procedural regime currently in force in Portugal,

the judge benefits from officious duties to conform the procedural regime applicable to each lawsuit, which leads him to act as a managing judge.

Although there is only one form of common procedure in declaratory proceedings. This is not a rigid procedural model and it is planned in abstract terms for the generality of actions.

After the 2013 reform this procedural model marked, however, by an important degree of flexibility, which confers, within legal limits (Sousa, M.T. de, Mendes, J. de C., 2022), some plasticity to the process, making it moldable, customizable to the particularities of each specific action, as well as simpler and more agile (Mesquita, 2013; Sousa, M.T. de, Mendes, 2022)[1].

To this extent, the legislator allows the judge, acting as his "*longa manus"* (evaluating in concrete terms, in each lawsuit, what the legislator cannot, in the abstract legal rules, anticipate), to adapt the procedural regime applicable to each court case, according to its "specific anatomy".

The general provision of these duties is concentrated on two articles of the Civil Procedure Code (CPC): article 6, which provides for the so-called duty of procedural management-"*gestão processual*", and article 517, which

1Some doctrine holds that case management also extends to the determination of the content of the decision. The object of the present text concerns only the formal case management. They also distinguish, with great classificatory clarity, between substantial (concerning the direction of the proceeding) and instrumental (concerning formal adequacy) procedural management, pp. 93 e 94.

enshrines the so-called power of formal adequacy-*"adequação formal"* (Alexandre, 2013)[2].

According to article 6 CPC:

"1-It is the judge's duty, without prejudice to the onus of impetus especially imposed by law on the parties, to actively direct the process and to provide for its speedy progress, promoting of his own motion the necessary steps for the normal pursuit of the action, refusing what is impertinent or merely dilatory and, after hearing the parties, adopting mechanisms of simplification and procedural agility that guarantee the fair settlement of the dispute within a reasonable period of time.
2 - The judge shall, of his own motion, take steps to remedy the lack of legal procedural premises that can be remedied, determining the necessary steps to be taken to regularise the proceedings or, when the remedy depends on an act that must be carried out by the parties, inviting them to do so".

In turn, article 517 CPC states:

"The judge must adopt the procedural conduct appropriate to the specificities of the cause and adapt the content and form of procedural acts to the end they are intended to achieve, ensuring a fair trial".

These general rules are embodied in some specific rules, as it will be explained below.

However, as general provisions and open clauses, those two rules allow the judge to exercise such duties even in cases that are not specifically provided for in the letter of the law, provided that the assumptions and rationale for its application are met.

Although the intervention of the judge as case manager may occur at any stage of the process. Especially, it takes on special importance at the intermediate stage.

2According to the provisions of article 591(1,e))CPC, the order determining formal adequacy, simplification or procedural agility, in the terms foreseen in article 6 (1) and in article 547 must be issued in the previous hearing. If this is waived, it will be issued within 20 days after the end of the pleadings (article 590 (2)CPC). The difference in the scope of application of these two legal precepts is not doctrinally unanimous. Proposing criteria to differentiate the scope of each article.

This is the phase that usually follows the first phase (phase of the pleadings) and precedes the final hearing phase. It is also the first moment in which, as a rule, the judge has contact with the case.

The intervention of the judge as case manager may, however, occur before or after this phase.

It may occur, for instance, in the first phase of the process, in case of a preliminary decision.

In fact, although, as mentioned above, the first moment in which the judge intervenes in the case corresponds, as a rule, to the intermediate phase (Varela, 1998)[3], there is the possibility of intervening at an earlier moment (still at the pleadings phase, after the initial petition has been filed).

This preliminary injunction decision is possible not only in cases where the law imposes it, but also in cases where, as case manager, the judge decides so[4]. The judge acts, in this case, in limine management of the process.

Still in the pleadings phase, after the summons, the judge will decide as case manager when, given a request made by the defendant invoking a compelling reason that prevents or makes it unusually difficult for that party or his attorney to organize the

3This has been the case since the 1995/1996 reform.

4Article (590 (1) CPC:"It is the secretariat's duty to execute judicial orders and comply with the service guidelines issued by the judge, as well as to practice the acts delegated to it by the judge, within the scope of the cases it holds and in accordance with the law".

defense, he will extend the deadline for the defense, up to a maximum of thirty days.

In this case, and contrary to the general rule, the judge may grant this extension of time without first hearing the other party[5]. This decision is final and cannot be appealed[6].

In the intermediate stage, the case management feature will be revealed if the judge chooses to issue an improvement order, inviting the parties (or one of them, if only the latter is justified) to improve the pleadings.

In this case, the judge may invite the parties to remedy the irregularities in the pleadings[7].

This will happen, namely, when the pleadings lack legal requirements or show insufficiencies or imprecisions in the exposition or concretization of the matter of fact alleged[8].

The judge must, also, issue an improvement order when the party has not presented an essential document or one that the law makes the continuation of the case dependent on[9].

The issue of an improvement order will also be justified if some procedural assumption is not met and is intended to give the

5Article 569 (5) CPC.

6Article 569 (6) CPC.

7Article 590 (2, b)) CPC.

8In this case, the judge will set a deadline for the presentation of a pleading in which to complete or correct the one initially produced (article 590 (4) CPC). No appeal is admissible against a decision calling for the rectification of irregularities, insufficiencies or inaccuracies in the pleadings (article 590 (7) CPC).

9Article 590 (3) CPC.

parties a period of time to regularize the proceedings[10].

Another dimension in which, in the intermediate stage, the judge can manage the process, altering its normal course, corresponds to that which allows the judge to choose to anticipate to this stage the act of judging the cause, immediately deciding about the merit of the lawsuit, whenever the state of the process allows, without the need for further evidence. In this case, the judge will consider, in whole or in part, the claim/(s) made or any peremptory exception[11].

To do so, it must first allow the parties to discuss the facts and the law[12] and, if necessary, order the joinder of any evidence that may be necessary for such knowledge to take place[13].

It has been discussed, however, whether, in cases where the dispute may be resolved in the light of several legal solutions, the judge may immediately decide in accordance with the legal solution about which he has all the elements and of which he is very much convinced.

The majority of jurisprudence has been negative, holding that the judge can only decide in advance if, at the time, he has the elements that allow him to decide in accordance with the various plausible legal solutions (Capelo, 2020)[14].

10Article 590 (2, a)) CPC.
11Article 595 (1, b)) CPC.
12Article 591 (1, b)) CPC.
13Article 590 (2, c)) CPC.
14On this aspect, proposing a balance solution prof. Capelo.

An issue close to the one just mentioned concerns the possibility of partial decision on the merit. In this case, the judge decides only on one of the claims or part of the claim, leaving the decision on the rest for the final decision. This is a multi-step decision of the case (Capelo, 2020).

This type of judgment is expressly allowed by law, particularly when the decision on a peremptory exception is involved[15].

The judge may also choose to manage the process in a different way from that laid down by law, not by introducing any change in the sequence or form of the acts, but by designating a different person to carry them out.

This is the case, for example, when he delegates to the registry the practice of acts that do not fall within the reserve of jurisdiction (set of acts practicable exclusively by a judge)[16].

On the other hand, procedural management does not necessarily have to correspond to an isolated act of the judge.

This is the case, for example, when, also in the intermediate stage, the judge schedules the acts to be carried out at the final hearing, establishing the number of sessions, their probable duration and their dates[17].

This management activity must be carried out in close dialogue with the parties, who should be heard on this aspect.

15Article 595 (1, b)) CPC.
16Artigo 157 (2) CPC.
17Article 591 (1, g)) CPC.

It is also at the intermediate stage that the judge decides whether or not to hold a preliminary hearing.

This hearing precedes the final hearing and consists on a face-to-face meeting between the judge and the parties, where, among other things, the debate on various aspects that are important for the proper decision of the case is promoted.

It is, therefore, also the privileged moment for the parties to attempt conciliation, allowing a special intervention by the judge in the management of the conflict.

To this end, the judge must actively strive to obtain the most appropriate equitable solution to the terms of the dispute[18].

In case of total or partial frustration of the conciliation attempt, not only the concrete solutions suggested by the judge, but also the reasons that, in the understanding of the parties, justify the persistence of the dispute, will be recorded in the minutes (Capelo, 2020)[19].

This preliminary hearing also takes place in the intermediate phase.

Under the law, in addition to cases in which the prior hearing does not take place because the legislature prohibits it, the judge may dispense with holding the prior hearing when it is intended only for the purposes indicated in subparagraphs d), e) and f) in article 591 (1) of the CPC.

18Article 594 (3) CPC.
19Article 594 (4) CPC.

In jurisprudential practice, however, it has been verified that, under their procedural management powers, judges have called for a prior hearing only when they believe it is necessary for the good management of the process (Capelo, 2011; Capelo, 2020).

It is also, as a rule, in the intermediate stage that the judge decides whether or not the procedural assumptions are verified. He evaluates, for example, if the process has the exact parties.

In the case of coalition, in principle, the judge will not admit it if the claims correspond to different procedural forms[20].

However, when the claims correspond to forms of procedure that, although different, are not manifestly incompatible, the judge may authorize the combination, whenever there is a relevant interest or when the joint examination of the claims is indispensable for the fair resolution of the dispute. In this case, it is up to the judge to adapt the proceeding to the authorized cumulation[21].

This solution is also adopted when the defendant makes a counterclaim in the same legal proceeding and the plaintiff's claim corresponds to a form of procedure different from the form of procedure of the defendant's claim[22].

On the other hand, in cases where the value of the claim does not exceed €15.000, the judge should, once the pleadings phase

20Article 37 (1) CPC.
21Artigo 37 (2 and 3) CPC.
22Article 266 (3) CPC.

is over, define the subsequent procedural steps to be followed, in accordance with the guidelines defined in article 597 CPC and considering the need and suitability of the act for the purpose of the legal proceeding.

Case management must also be enforced on what concerns evidence, at several levels.

Firstly, because the judge may determine, of his own motion, the production of evidence (the inquisitorial principle is in force at this level).

Secondly, under his powers of procedure adequacy, the judge may order that evidence be produced earlier than it would normally take place, when this is useful for the proper decision of the case.

The anticipation of the production of evidence may be justified, even if it is not a case of urgency, when, for example, the judge intends to proceed with an anticipated judgment of the cause[23].

The judge may also change the manner in which certain acts of evidence are produced when this change is important to enable the court to clarify matters more quickly.

This happens, for example, when the judge determines that the experts' opinion is presented orally in the preliminary hearing and not through the presentation of a written report. It is essential, however, that this procedural management measure

23Article 411 CPC.

does not jeopardize the guarantees inherent in the right to a fair trial and effective judicial protection (De Cristoforo, 2010)[24].

This change, promoted by the judge, of the form of the acts provided for by law is not restricted, however, to the activity of producing evidence.

Under the terms of article 131 CPC, the judge must carry out this adaptation in order to ensure that the procedural acts have the form that, in the simplest terms, best corresponds to the end they are intended to achieve.

The exercise of this management with regard to the form of the acts will presuppose, however, that the legally established form is not imperative.

Still with regard to evidence, the judge may act as case manager when he allows the number of witnesses questioned by each party to exceed the maximum legally established.

According to the general rule, each party may only call a maximum of ten witnesses[25].

However, the judge may allow the examination of a greater number of witnesses when this is appropriate in view of the nature and extent of the matters of proof[26].

This decision cannot be appealed.

Also in the final hearing, circumstances may arise that require

24To deepen the analysis of case management as a means to ensure the right to a fair trial.

25Article 511 (1) CPC.

26Article 511 (4) CPC.

the judge to use his management powers.

Thus, for example, if it is a case in which legal assistance is not compulsory and the party is not assisted by a lawyer, the examination of witnesses is carried out by the judge, who is also responsible for adapting the procedural procedure to the specifics of the situation[27].

Legal proceedings management also applies in the appeal phase.

Thus, and by way of example, reasons eminently related to the promotion of procedural economy determine that, if the party files an exceptional appeal to the Supreme Court, but the formation of judges that decides on its admissibility understands that it is not admissible, it may admit it as a normal appeal to that Court, provided that the requirements of the latter type of appeal are met[28].

Along the same line of solution, if the party files an appeal per saltum to the Supreme Court of Justice, but this court finds that such appeal is not admissible, it may refer the case to the lower court (Court of Appeal), so that the appeal may be processed and decided in this latest Court.

This also presupposes, however, that the admissibility requirements for this type of appeal are met[29].

Finally, it should be noted that the exercise of the duty of

27Article 40 (3) CPC.
28Article 672 (5) CPC.
29Article 678 (4) CPC.

procedural management may become necessary, by prohibiting the practice of certain procedural acts in a certain case, as a way to ensure compliance with the procedural principle of limitation of acts.

According to this principle, it is not lawful to perform useless acts in the process[30].

However, the practice of an act may be useful in one proceeding, but useless in another. It is up to the judge, as case manager, to make this assessment in each specific lawsuit.

It is important to emphasize that, as a rule, the exercise of case management by the judge follows two fundamental guidelines in the portuguese system.

On the one hand, it is not a question of mere powers, but rather of the judge's true duties. In other words, the judge not only has the possibility of exercising case management; he has the duty to do so. This is, therefore, a binding power, not a mere discretionary power (De Freitas, Alexandre, 2018).

On the other hand, all management activity is subordinated to the adversarial principle, and the judge must hear the parties before issuing the decision that contains the management measure, or it will issue a surprise decision. It is, therefore, a paradigm of procedural management that moves away from an authoritarian profile.

30Article 130 CPC.

It is also important to verify to what extent the decisions handed down by way of case management may be appealed.

The legislator wanted the judge to benefit from the greatest possible autonomy at this level. For this reason, it adopted a special regime for appeals, according to which these decisions are, as a rule, unappealable.

These decisions do not, therefore, meet the general rule according to which, in principle, an appeal may be filed if the value of the claim is higher than the value within which the court decides without the possibility of appeal and if, at the same time, the appellant's defeat is higher than half of this amount.

There are, however, limits to the possibility of appeal: the decision may be appealed if it contends with, at least, one of four matters considered absolutely crucial in the context of the rights to effective judicial protection and to a fair trial (the principle of equality, the adversarial principle, the procedural acquisition of facts and the admissibility of evidence).

This follows from what is established in article 630 (2) CPC, according to which:

"No appeal shall be admissible against decisions to simplify or expedite the procedure, rendered as provided for in article 6(1), decisions rendered on the nullities provided for in article 195(1) and decisions on formal adequacy, rendered as provided for in article 547, unless they conflict with the principles of equality or the adversarial principle, the procedural acquisition of facts or the admissibility of evidence".

The duty of case management also extends to special

proceedings.

For example, in the process of accompanying adults, it is the judge's responsibility to decide what type of publicity should be given to the commencement, course and final decision of the case[31].

In summary, through case management, the portuguese legal system has one special element that allows to endow the legal proceedings with the necessary flexibility and agility to transform them into an even more effective instruments to achieve justice.

This is certainly a path that has not yet been completed and does not fully coincide with that adopted in other legal systems (Di Cristoforo, 2005).

In any case, it must be followed in a prudent and consistent manner in order to achieve its main goal of promoting the right to effective judicial protection.

31Article 893 (1) CPC.

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