The legal system in Portuguese-speaking countries

The existence of a “lusophone legal system” is not a specific theme. Some authors recognize its existence. Others deny it, although recognizing the similarities between the several legal systems of Portuguese-speaking countries. Some of the arguments used to deny the existence of a lusophone legal system are the application, in African countries, of a customary law instead of the official law or the existence of strengths that prevent the inclusion of all Portuguese-speaking countries in a same legal system, like the EU, Mercosul or the several African organizations.

Without entering into this discussion, there is a reality that cannot be denied: nowadays the similitude between legal systems in Portuguese-speaking countries (PsC) is evident. That is why it is not difficult for someone legally qualified in one of those countries to act in any of the others. A common history, legal conception and language allow to state that the lusophone legal system has particularities that prevent us from saying it is just one more among the several legal systems included within the Romano-Germanic group, and that, obviously allow it to be distinguished from common law systems.

There is a common history that cannot be denied and the influence of Portuguese law is still obvious nowadays - PsC have assimilated significant legal principles through its own codification. That assimilation occurred not only by direct application of Portuguese law - as happened in Brazil after the independence declaration in 1822 and until 1917, or more recently in Macau -, but also through the creation of their own laws highly inspired by Portuguese rules.

Notwithstanding the importance of the past, looking to the present situation of those legal systems we reach the same conclusion.

In what concerns civil law, we shall highlight the importance of the Portuguese Civil Code of 1966, still in force in Portuguese-speaking African countries. Even some parts of the Portuguese Civil Code of 1867 - family and inheritance law - are presently applicable in Goa, Damão and Dío, ancient Portuguese territories in India.

It is a fact that in order to modernize and adapt the Portuguese law to local reality, several PsC are refreshing their laws, approving new rules. Even so, new laws still follow the recent evolution of Portuguese legislation. That occurred, for instance, in Republic of Guinea-Bissau, with the arbitration law of 2000, or in Republic of Angola which adopted, in 2004, a new companies’ law. Also in Mozambique we can find a clear influence of Portuguese law in the Commercial Code of 2005.

A very different way took the law of East-Timor. Since the country was occupied by Indonesia, that imposed its own legal system, in 1975, and until 1999, Portuguese law was set aside. Even though, the influence of Portuguese law was so strong that since the independence of East-Timor the laws that have been created reflect a reborn of Portuguese influence. That may be confirmed by the Constitution of 2002 or the Civil Code’s project of 2008.

Contrary to what one may expect, this continuous process of influence does not work only in one way - we just need to look at the relations between Portugal and Brazil. The recent Brazilian Civil Code of 2002, contrary to what has happened in mid XX century, has emphasized the connexion between the countries as it is very close to Portuguese Civil Code of 1966. This connexion is confirmed, for instance, by the protection given to personality rights and to legal transactions. On the other hand, Portuguese law has received some influences from the Brazilian law such as the rules regarding consumer’s protection.

One may ask if these similarities between the legal systems of PsC bring any sort of advantages. The answer is obviously positive. It is easy to realise the enormous advantages of having a group of such important countries sharing the main legal values, and, above all, a common language, even from a strictly economic point of view - there is around 240 million Portuguese-speaking people!

Considering our perspective as law professionals working in Portugal and in several PsC, namely lusophone Africa, the advantages are easily identified. The intensification of international trade brought the need to deal with the globalization phenomenon. The latest years have been especially remarkable in what concerns European investment in Africa. The African market has been recognized as having a high potential - most of the countries are living in a development stage which means that there is a huge range of services to be provided, many public works to be executed and natural resources to be explored. The development of all these tasks is being mainly supported by foreign investment, sometimes in a close collaboration with local entrepreneurs.

The safety of knowing how those countries work in legal and economic terms and the familiarity with these legal systems allow us to provide our clients a stronger and solid legal advice based on the deep knowledge we have reached through our experience. In fact, the fear that investors may have - perfectly reasonable considering the high amounts usually involved - is mitigated by the knowledge of the legal system which allows them to anticipate the risks and take, from the beginning, all the suitable measures to prevent future problems and unexpected circumstances.

The same potential recognized in the African market is also recognized in the Brazilian market. We may, for instance, underline the recent Portuguese investment in Brazil, focused in strategic areas such as telecommunications and energy with the same demand for a high quality legal support.

The similarities between these legal systems bring other advantages from our point of view as law professionals: knowing well the evolution of Portuguese law and the several changes that have been introduced in the existing rules through the years, allow us to quickly identify the main problems that have arisen from practice and to successfully assist the process of law revision that several PsC are facing, as stated above.

For the same reasons and considering the intensification of international trade between these countries, the submission of possible conflicts arising from international contracts to arbitration courts in Portugal is a solution to explore.

The existence, at least, of a common language and background in what concerns the main legal principles makes it easier to acquire a deep knowledge of PsC legal systems. Whenever there is the will and it is done, it becomes easy to maximize the connexion between lusophone countries and to provide an efficient legal support to clients who want to expand their business all over those territories.
For us, this deep knowledge of PsC legal systems is as essential as the deep knowledge of Portuguese Law - that is what has been allowing us to provide a high quality legal support in several operations, through our local offices in all lusophone Africa and through strategic partnerships with the best law firms in Brazil.

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