RECENT DEVELOPMENTS IN PORTUGUESE LAW

I start the survey in 1999, a year of myriad new statutes and judgements making old doctrinal castles crumble, solving old vexatae quaestiones and treading new paths in some fields of law not explored before.

1 MEDIA LAW

The first two laws enacted by the Parliament in 1999 concerned media law. Lei n° 1/99, 13/11 approved the status of the journalist, awaited for a long time by professional journalists. It covers professional requisites, access to the profession, incompatibilities. This statute renders more concrete deeply constitutionally protected rights and duties of journalists, such as the right to freedom of speech, access to information, access to sources (art. 38° Constitution).

Any citizen at least 18 years old can enter the journalist profession (art. 2°), and acquire a professional license for the exercise of it, as long as he has taken an adequate internship. Journalists must be as independent as possible, they are not allowed (art. 3°) to exercise at the same time activities linked to marketing, public relations, media consulting, as well as police or military functions. Also, members of executive governmental agencies are not allowed to exercise the journalist profession at the same time. Journalists have the right of expression and creation, and to have their journalistic work protected by copyright law (art. 7°). They also have the right of access to sources of information: the administration is obliged to grant it regarding official information, as long as it is not classified information, under secrecy of justice, or any allowed form of justified restricted nature (art. 8°). They also have the right of entrance in any public places, in order to forward their

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Lei is the formal denomination of statutes passed by the parliament, while Decreto-Lei is a statute passed by the cabinet. Both have the same normative value. The number after is the chronological numbering followed by a slash and the year of approval. After a comma the day and the month of approval are written. In this case, Lei n° 1/99, 13/1 means that it was the first statute passed by the parliament in 1999, on January 13. Statutes with legislative authority are published in the 1st series of the official bulletin, Diário da República.
professional aims (art. 9°). They are bound (and may invoke) professional secrecy, and are allowed to withhold any information regarding their professional activities. Journalists cannot be deprived of any professional data or materials or be forced to produce them in any court procedures (art. 11°). Journalists cannot be forced to accept any assignments shocking their conscience, and may not suffer any sanctions thereby (art. 12°). They also have the right to participate in the general editorial trend of the media organisation, namely by electing representatives to a redaction committee, in charge of co-operating with the direction in order to issue editorial guidelines (art. 13°). They are bound by several ethical duties (art. 14°), namely to inform in an accurate and unbiased fashion, avoiding discriminatory statements, respect privacy and refrain from accusing without solid evidence, amongst others. Interfering with freedom of information is now a crime under this law (art. 19°). Violation of other rights and duties are regarded as misdemeanours (art. 20°).

Lei n°2/99, 13/1, the Press Law, develops the constitutional guarantees of freedom of press, freedom and independence of journalistic enterprises vested by article 38° of the Constitution.

Very important is the freedom to found a media enterprise (art. 5°), however it must be transparent and public who is the proprietor of it (art. 16°), and mergers affecting pluralism of information are forbidden (art. 2°/2° a). Organisation of the media enterprise is provided for by art. 19° ff, essentially constituted of a director (appointed by the proprietor) and of a redaction committee (elected by the journalists).

This statute also regulates the conditions for the right to response and rectification (art. 24° ff.). Anybody whose reputation may be affected by references in that media organ, albeit indirect, has the right, regardless of civil or criminal liability, to have gratuitously published in that media his response, or to have that reference rectified. If the media organ does not comply with that on its own motion, an injunction may be filed and carried out, either by orders of a court or of the Media Ombudsman.

The media enterprise is jointly liable with the journalist incurring in a tortious act through the media (e.g. a defaming article), if the director knew and did not oppose to it (art. 29°). Regarding crimes committed via media, its author as well as the director who did not effectively oppose to it, are liable.

2 PLANNING AND PUBLIC CONSTRUCTION LAW

An extensive reform of planning and public construction law took place in 1999.

Decreto-Lei n°59/99, 2/3 alters the regime of public construction works, introducing several expense control measures, increase and decrease of price, compensation for more/less work and sureties, in order to protect public interest. The statute was also adapted to comply with Directive 93/37/EC on public construction works. Public services concessionaires are now covered as well by the regime: if they contract for works, this will be the mandatory regime. It is now possible for a contractor to set a