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Judges looking into themselves: what makes a good judge?

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Sentencing research lacks empirical studies based on judges' experiences and viewpoints. This article contributes to that field by discussing criminal judges' professional self-perception regarding their role and the sentencing decision-making process. We developed a mixed-methods study incorporating a self-report questionnaire ($n = 49$) and a semi-structured interview ($n = 12$). We tested for exploratory factor analysis and relations between variables from the data of the questionnaire and analysed the interviews through content analysis. The results show that, despite characterising sentencing as a logical/rational process, judges took more introspective and controversial positions in the interviews. Judges minimised the relevance of emotional aspects in sentencing decision-making, even though emotions are an inevitable part of those processes. These findings contribute to understanding sources of excessive judicial discretion and identifying aspects of sentencing decision-making that are more vulnerable to implicit bias. We argue that these aspects must be intentionally considered and incorporated into judges' training, promoting effective emotion regulation strategies that allow for cognitive change and emotional disclosure.

Keywords: judges' viewpoints; sentencing decision-making; sentencing practice; judges' role; mixed-methods approach.

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Introduction

How the professionals conceive the nature of their job impacts how the task will be performed and the latitude of action associated with it. The sentencing decision process is particularly relevant for the offender and society since it may imply the loss (or limitation) of freedom and entails a symbolic dimension of the importance of following socially defined norms (Anleu & Mack, 2008), as well as the construction of what these norms are.

Sentencing has been characterised and analysed through distinct epistemologies (Castro Rodrigues et al., 2023), from a 'legal-rational' tradition to a new penology perspective (Tata, 2007). These different epistemologies associate the task of sentencing to very different natures, from the most conventional, such as a traditional legal technique or a

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process of weighing several aspects, to alternative ones, such as craftwork (Tata, 2007), an art (Ashworth, 2005; Jacobson & Hough, 2007; Krasnostein & Freiberg, 2013), a process of instinctive synthesis (Krasnostein & Freiberg, 2013), and more recently, as an interpretative, processual, and performative social process (Tata, 2020).

The legal definition of sentencing, which considers it a mere application of the law, implies neutrality, impartiality, and impersonality (Mack & Anleu, 2011). Those features should be accomplished regardless of judges' characteristics (e.g. experiences, perceptions, and beliefs) (Bandes, 2009), intuition, cogitation, and randomness (Posner, 2016). Nevertheless, judges are not, and should not be, passive actors who merely apply rules; they also exercise discretion (Posner, 2016), which is necessarily related to how they think they should exercise their profession. Limiting a judge's reasoning and decision-making process, namely in sentencing processes, to rational, supported logical decisions, dispassionate, and devoid of personal aspects and emotions (e.g. Maroney & Gross, 2014; Tumonis et al., 2013) is flawed. Judges, like ordinary people, feel and respond to emotions, even if there is a belief among some that they should not (Maroney & Gross, 2014).

Moreover, some theorists of judicial decision-making have argued that this process is not necessarily ideologically neutral but a product of a personal judgement, where individual ideologies might play a role as relevant as legal principles (Gillman, 2001). The sentencing decision-making process must balance objective and subjective features and motivational and cognitive dimensions (Baum, 2010). Hence, sentencing stages can be divided into the analysis of objective circumstances of the case, such as the nature of the offence, and weighing subjective factors, such as the personality and the circumstances of the accused (Bennett & Broe, 2010). Even though sentencing implies making decisions based on the law, it is influenced by the judge's characteristics and personal experiences (e.g. ideologies, perceptions, prejudice, attitudes towards the victims, belief systems, gender, age, race, political orientation, emotions, socioeconomic status, sense of impartiality), attitudes towards the crime (causes and justifications) (Castro-Rodrigues & Sacau, 2015), professional experience (Bandes, 2009; Capurso, 1998; Maroney, 2011; Posner, 2016), and cognitive factors (e.g. anchoring or hindsight bias). Despite this evidence, judges tend to minimise or even reject the external influence of extralegal factors (Micle et al., 2013).

Theoretical background

Sentencing decision-making should benefit from a psychological understanding that incorporates cognitive, social, and emotional systems. Those systems are intrinsically associated with how judges perceive and understand reality; hence, they influence the construction of 'systems of classifications to interpret the external environment' (Drobak & North, 2004, p. 137). As humans, we may adjust our decisions according to our belief system and ensure that the meaning given to our decisions is according to our personal beliefs and ideologies (Castro Rodrigues et al., 2017). Regarding the sentencing process, this might mean that 'some judges will view one factor as important; other judges will disregard that factor and concentrate on another' (Drobak & North, 2004, p. 139) due to several personal biases. Life experience and worldview influence how a judge decides (Rachlinski & Wistrich, 2017), helping to build a sense of justice necessary for a good performance on the job (Chin, 2012). At the same time, the sentence is expected to be fairly delivered, keeping or restoring individual and collective faith in the legal and judicial system (Capurso, 1998).

In line with this, Spamann et al. (2021) challenged widely-held assumptions about judicial decision-making. Their experimental research reveals that judicial decisions are less

dependent on legal precedent or the distinctions between common and civil law systems than traditionally believed. Instead, individual judicial tendencies and case-specific details often hold more significant influence. Based on these results, Spamann et al. (2021) call for re-evaluating theoretical models of judicial behaviour, emphasising the importance of understanding the practical and situational factors that shape judicial rulings.

Simplifying reality into familiar benchmarks diminishes the uncertainty associated with complex situations (Castro Rodrigues et al., 2017) but inserts subjectivity and partiality, even unconsciously. For example, attributions and stereotypes related to defendants' dangerousness or rehabilitation potential help fill the void of incomplete information regarding specific individuals, which might be conditioning sentencing decisions (Castro Rodrigues et al., 2017). However, this does not mean sentencing decisions are lawless and based only on judges' previous experiences and preferences (Drobak & North, 2004; Gillman, 2001), feelings, emotional impulses, or instincts (Capurso, 1998). It is impossible to rely solely on previous experience since 'new problems, distinct from old answers, arise' (Drobak & North, 2004, p. 134). In contrast, even with penal codes and sentencing guidelines, professional training, and experience, judges are not immune to subjectivity and erroneous confidence in their accuracy or the effect of emotional processes on sentencing decision-making. Hence, experience is a variable to consider due to the apparent automatic access it implies by non-consciously sorting and prioritising information based on previous cases (Bennett & Broe, 2010).

In the legal tradition, the dispassionate judge is expected to exhibit neutrality, avoiding emotional influences that could compromise fairness and objectivity. This long-standing ideal assumes emotions are inherently disruptive to judicial reasoning. Nevertheless, while judges strive to adhere to legal principles, their decisions are inevitably influenced by emotions, often subconsciously (Wistrich et al., 2015). As such, more recent perspectives explore the complex interplay between emotion and reason in sentencing decision-making, rejecting the idea that emotion and reason are opposites (Maroney, 2006). Instead, this author argues that a good judge integrates emotional awareness with logical reasoning, enhancing decision-making.

Emotions are inevitably part of the legal decision process, so instead of ignoring or considering that they are malevolent, asking judges to put them aside, they should understand how they shape decisions and their influence on moral reasoning and empathic behaviour (Bandes, 2009; Maroney, 2011). Emotions are unavoidable in judicial contexts due to the nature of cases (e.g. criminal trials) and interactions (e.g. with victims or defendants) (Maroney & Gross, 2014). Emotional neutrality is neither entirely achievable nor always desirable, as some emotions, such as empathy, impact decision-making (Weinberg & Nielsen, 2012) but can support fair decision-making (Maroney & Gross, 2014). The challenges to the traditional view that judges should entirely suppress emotions note that attempts to separate emotional responses from legal reasoning, such as suppression, can impair cognitive function and effectiveness (Maroney, 2006; Wistrich et al., 2015). Empathy, for example, as the ability to understand a person from his or her frame of reference rather than one's own or vicariously experiencing that person's feelings, perceptions, and thoughts (VandenBos, 2015), is essential for understanding litigants' and victims' perspectives but must not compromise neutrality or lead to favouritism. Empathy is associated with a humanistic attitude towards the job (Chin, 2012), so there is a necessity to accommodate it in the legal settings due to the overlapping of factors related to sentencing decision-making (e.g. sentencing principles and aims, discretion, nature of the crime, gender or race of the offender, stereotypes or

bias, and judge's professional and personal experience; Anleu et al., 2017) and aside from the expectations of a dispassionate, impartial, and solely logical professional.

Emotions can make the task demanding because cases under analysis can evoke strong emotional activation, from which the judges are not immune (Chin, 2012). However, this regular exposure to vivid emotional content might be appropriate for the decision process (Maroney & Gross, 2014; Tumonis et al., 2013). By considering others' emotions, judges can adjust to social norms and can make more informed decisions (Bandes, 2009). Understanding the interplay between law and human emotion helps judges interpret behaviour and navigate the social context of cases (Maroney, 2006).

Furthermore, magistrates should recognise their emotions and those of others in their daily activities and consider the importance of emotional engagement without distress and exhaustion (Anleu & Mack, 2005).

According to Gross's Process Model of Emotion Regulation (1998), several strategies might be used to influence emotional responses: situation selection (e.g. avoiding triggers), situation modification (e.g. altering the environment), attentional deployment (e.g. distraction), cognitive change (e.g. reappraisal), and response modulation (e.g. suppressing emotional expression). Judges must regulate their emotions in ways consistent with the ideal of impartiality and task demands. As such, not all regulation strategies are equally effective or appropriate. For example, situation selection and modification might not be possible, and many attentional deployments are not supposed to happen. The response modulation of suppression may help judges appear dispassionate but can impair cognitive functioning and increase emotional arousal. Cognitive change is a more effective strategy, enabling judges to reinterpret emotional situations without suppressing them (Maroney & Gross, 2014).

Emotion suppression might also lead to unconscious biases in judges' sentencing (Maroney, 2006). Judges as a professional group might not differ from well-educated adults regarding vulnerability to implicit bias (Irwin & Real, 2016), intuitive reasoning, or confirmation bias (Rachlinski & Wistrich, 2017).

In line with this, Dror's work (2020) examines how implicit biases and cognitive fallacies may systematically impact decision-making, arguing why even well-trained and experienced professionals are prone to errors in judgement. This work identifies six common 'fallacies', considered misconceptions that professionals, including judges, may hold about their decision-making processes. In line with this theoretical framework, judges may have some misconceptions about impartiality related to the Expert Immunity Fallacy, according to which they might believe their experience and training render them immune to bias, ignoring evidence that expertise does not safeguard against cognitive biases. Similarly, the Illusion of Control Fallacy suggests that judges may overestimate the effectiveness of their awareness or ethical commitments in counteracting unconscious biases, relating to the Ethical Issues Fallacy, which is the belief that biases are solely ethical problems, implying that only unethical individuals are susceptible, when, in reality, cognitive biases affect even honest and dedicated professionals. This fallacy is also related to the Bad Apples Fallacy, which is the idea that biases are due to a few incompetent individuals ('bad apples') (overlooking the systemic nature of cognitive biases that can impact competent experts). Finally, also related to these processes is the Blind Spot Fallacy, which is the tendency to recognise biases in others while being blind to one's own, leading to a false sense of objectivity.

Besides these fallacies, Dror (2020) also organised eight sources of bias into three categories, describing how they affect decision-making processes: *Case-Specific Factors:* (1)

Contextual Bias: The influence of extraneous background information, such as pre-trial publicity or knowledge of prior convictions, which can distort perceptions and decisions; (2) Confirmation Bias: The tendency to favour information that supports pre-existing beliefs or expectations while ignoring contradictory evidence; *Analyst-Specific Factors:* (3) Overconfidence Bias: The overestimation of one's ability to make accurate and unbiased decisions, often leading to a lack of critical self-reflection; (4) Role Effects: The influence of the decision-maker's professional role and responsibilities, such as a judge's societal duty to uphold law and order, which can skew impartiality; (5) Groupthink: Conformity to group norms and opinions, which suppress dissenting viewpoints and reinforce collective biases; (6) Anchoring Bias: The reliance on initial information (anchors) when making decisions, even when the anchor is irrelevant or misleading; (7) Personal Bias: The influence of the decision-maker's own experiences, beliefs, and preferences, which unconsciously shape their judgement; *Human Nature:* (8) Human and Cognitive Factors, and the Human Brain: The inherent limitations of human cognition, such as reliance on heuristics, pattern recognition, and memory constraints, which introduce systematic biases into decision-making. According to Dror (2020), this bias may impact judicial contexts in several ways. Judges may be unconsciously swayed by irrelevant contextual information, such as media coverage, victim impact statements, or a defendant's background, which can skew impartiality. Judges' professional responsibilities, such as maintaining public trust or enforcing societal norms, may unconsciously prioritise punitive outcomes over rehabilitative or restorative justice approaches. Emotional reactions to cases – such as empathy for victims or anger at crimes – can subtly influence sentencing decisions, leading to harsher or more lenient outcomes. Institutional pressures, such as the need to clear case backlogs or adhere to precedent, can drive expedient decisions at the expense of thorough deliberation.

To understand sentencing as it happens in practice (law in the books versus law in practice), we must study how judges make and conceive their sentencing decisions (Castro Rodrigues et al., 2019). Understanding the role of subjectivity and emotion, judges' awareness and appreciation of these factors and their possible bias, contributes to acknowledging how sentencing happens in practice, as opposed to theoretical legal traditional literature about legal and extralegal factors. Moreover, although several studies illustrate features of sentencing decision-making from social, moral, or neurobiological perspectives (e.g. Bennett & Broe, 2010), there is a lack of studies based on the judges' perceptions and accounts of the matter that are not exclusively based on a quantitative measure of the phenomenon (Castro Rodrigues et al., 2019).

In this work, we aimed to reveal judges' perspectives about the dialectic of sentencing, namely how they see a reasonable exercise of their professional activity, that is, the aspects they relate to a good judge. Through a mixed-methods study, we intended to provide a more profound knowledge of how sentencing is perceived by those who judge, exploring precisely how they describe the sentencing decision-making process and the judge's role.

Legal background

The Portuguese criminal justice system is a code-based civil law legal system based on Roman law (Castro Rodrigues et al., 2022). It is organised nationwide in three degrees of litigation: First Instance, Appeal, and Supreme Court. The Portuguese criminal courts of First Instance include one-judge, collective, and jury courts. One-judge courts can decide on summary judgments and crimes with sentences of up to 5 years. Collective courts are composed of three judges with the competence to decide on severe crimes, with sentences that may exceed 5 years. Jury courts might happen upon request, which rarely happens, being

competent to decide on specific serious offences. Professional judges dominate Portuguese courts. To become a judge, law graduates must apply to the Judicial Studies Centre (Centro de Estudos Judiciários (CEJ)), a training centre for judicial magistrates, and attend training courses and an internship. CEJ admission includes a curriculum vitae or professional experience assessment, a written aptitude test, and a psychological test.

Material and methods

Participants

A sample of 49 judges from three different Portuguese criminal courts (14 from the north, 8 from the centre, and 27 from the south of the country) agreed to participate in the quantitative phase of the study. This sample comprised all the judges from these three courts, except one in the centre who had sick leave. As such, this sample may represent the universe of Portuguese criminal judges. First, because the study targeted the three main Portuguese cities, covering the mainland Portuguese geographical area and the majority volume of processes judged. Second, the sample included judges with different professional trajectories. Portuguese judges start working in small courts nationwide, dealing with less severe situations, and only move to the central criminal courts after several years of experience.

Our sample included male ($n = 23$) and female ($n = 26$) judges to allow for gender comparison. Their mean age was 44.5 ($SD = 5.5$), ranging from 32 to 55. Regarding professional experience, they had 5 to 23 years of judging experience ($M = 16.1$; $SD = 4.6$).

Of the 49 criminal judges, 12 (5 women) also collaborated in in-depth interviews. This group corresponded to all the judges from the court in the country's north region (except one that we decided to exclude because he ended up being a key element in the research discussion and another unavailable during the interview period). We decided to collect the interviews in that court since we spent almost 1 year collecting data and then established good professional relationships, which facilitate trust and promote self-disclosure from judges.

Instruments

The 'Questionnaire of judicial decision analysis' was developed by Castro Rodrigues and Sacau-Fontenla in 2009 to this study and aims to gain access to judges' opinions about their sentencing decision-making. It aggregates groups of items on topics that explore the judicial sentencing process based on the literature on these topics and one group of sociodemographic information. Most items are to be answered on a 5-point Likert scale – 'nothing important' to 'very important' and 'totally disagree' to 'totally agree' – and one group is to be answered on a 5-point semantic differential scale. In this article, we will analyse the items evoking judges' opinions about the importance of 17 characteristics associated in the literature with the quality of a judge.

The in-depth, semi-structured interview comprises 30 questions organised in four groups regarding the sentencing process: the task of judging and the sentences, prison sentences, the defendant in court, and the penal system in Portugal. In these are questions regarding judges' accounts about the qualities of a good judge (e.g. personal challenges, education, life experience). The choice for this type of interview was due to participants' characteristics, that is, their capabilities of developing the issues according to their line of thought, and to the type of data that we intended to obtain – we wanted to access judges' points of view, through their reasoning and by minimising the directivity in their responses.

Procedures of data collection

Data for the present study were collected in the collective penal courts of three major Portuguese cities: Lisbon, Porto, and Coimbra.

The questionnaire was handed out directly to the judges by the first author.

Authorization to conduct the research was obtained from the Portuguese Superior Council of Magistracy. This body has the role of verifying if the projects are following their ethical standards.

After obtaining the study's approval, we contacted the Presiding Judge of the Criminal Courts to define the procedures to adopt in the data collection.

The questionnaire was piloted with two former judges before being administered to the final sample to check for its facial validity, after which adjustments were made.

The participants signed an informed consent form after accepting to participate, which described the main goals of the study, completion time (i.e. estimated time for fulfilling the questionnaire of 20 min and 90 min for the interviews), the confidential and anonymous nature of the data, that no harm or incentives were expected from participating, and that they could withdraw at any time. Concerning the interviews, magistrates were invited to participate after the first author spent 1 year inside the courtroom. Conducting the interviews later in the research was intended to maximise the judges' willingness and comfort in speaking to the research team due to the confidence they developed with us during that year.

Procedures of data analysis

Data analysis included: (a) Descriptive statistics of 17 characteristics associated with a good judge; (b) Exploratory factor analysis to verify the existence of latent dimensions related to the quality of a judge; (c) Associations among underlying dimensions and demographics (e.g. age, gender); and (d) Content analysis of the categories of the interviews.

We tested for group differences and relationships between variables, using an alpha level of .05 for all statistical tests. Statistical analyses were performed using IBM SPSS Statistics 28 software.

Interviews were transcribed verbatim and analysed through a content analysis procedure (Bardin, 2009). The categorisation grid was developed by two independent coders, based both on the interview guide and the answers obtained, in a deductive-inductive process, that is, starting from the literature review and the interview guide developed by this literature review (deductive), but refined according to the data obtained (inductive). We used the software NVivo (version 10) to support the organisation and codification of the data. To address reliability and objectivity purposes, we adopted different validation strategies, starting with the intentionality of the sampling process. Data analysis was conducted with a constant comparative and reflexive analysis throughout the process and a detailed presentation and illustration of each category with examples of participants' speech. The units to be coded into the categorisation grid were defined as the judges' ideas exposed in the interviews, which is a choice most suitable to spontaneous discourse than sentences or paragraphs. In the initial phase and until a consensus was reached, two raters codified the units according to their semantic proximity. Ultimately, the two researchers checked each category unit to warrant semantic proximity and adequacy to the codified category.

Results

What is a good judge?

A set of 17 personal characteristics were used to assess judges' opinions about what makes a good judge. Those characteristics cover several domains, from skills acquired during academic training to life experiences. Table 1 shows that a good judge was described by individual characteristics rather than their training or professional experience. A good judge is primarily humanistic and socially aware, with life experience and common sense. Conversely, emotional characteristics such as compassion or empathy were devalued.

Table 1. Descriptive statistics on the characteristics of a good judge.

Characteristics of a good judge	*M*	*SD*
Common sense	4.59	0.73
Comprehensive perspective towards social factors	4.47	0.71
Humanist attitude	4.33	0.88
Life experience	4.31	0.85
Flexibility regarding different positions	4.12	0.93
Consistency	4.00	1.04
Academic training	4.00	0.91
Years of experience as a judge	3.98	1.09
Efficacy on writing sentence decisions	3.94	0.85
Effortless decision-making	3.80	1.00
Exceptional domain of legal factors	3.58	0.94
Worldview	3.45	1.34
Intuition	3.18	1.30
Compassion	2.22	1.16
Empathy towards the defendant	1.88	1.11
Empathy towards the victim	1.86	1.10
Emotional involvement	1.39	0.73

Table 2. Exploratory factor analysis on the characteristics of a good judge.

	Components		
	1	2	3
Flexibility regarding different positions	.831		
Efficacy on writing sentence decisions	.750		
Humanist attitude	.715		
Conception of the world	.648		
Comprehensive perspective towards social factors	.640		
Consistency	.640		
Take a position with ease	.543		
Life experience	.434		
Academic training		.776	
Years of experience as a judge		.680	
Exceptional domain of legal factors		.680	
Intuition		.584	
Common sense		.339	
Empathy towards the defendant			.893
Empathy towards the victim			.890
Compassion			.591
Get emotionally involved with the case			.511
Variance explained	21.38%	16.02%	15.04%

The underlying dimensions of a good judge

We conducted an exploratory factor analysis (Table 2) with Varimax rotation with Kaiser normalisation (KMO = .617; Barlett $p < .00$). The subject-to-variable ratio is 2.88 for factors related to the quality of a judge. Costello and Osborne (2005) referred to satisfactory factor outcomes even with small samples or subject-to-variable ratio. Analysing the scree plot, we selected three factors that explained 52.43% of the variance, with factor loadings from .34 to .89.

A good judge was defined through three main domains:

- The domain of inner characteristics. This dimension includes personal characteristics such as flexibility, humanism, and consistency. This domain represents a person's most structural and experiential characteristics, which depend more on vital experiences and psychological and cognitive profiles and are less likely to be trained.
- The domain of professional characteristics. This dimension includes academic training, professional experience, mastery of legal factors, intuition, and common sense. The statistical inclusion of intuition and common sense in this domain suggests that judges may consider them professional skills.
- The emotional domain. This dimension combines emotional aspects such as empathy, compassion, and emotional involvement.

The most relevant domain in the definition of a good judge was the domain of inner characteristics, with a mean of 4.05 ($SD = 0.66$) in a range from 1 to 5. This was followed by the professional domain ($M = 3.86$, $SD = 0.67$). The emotional domain was the least valued ($M = 1.84$, $SD = 0.78$), as expected from the descriptive analysis at this section's beginning.

The preponderance that judges assign to personal or inner characteristics about professional ones in defining a good judge contradicts the weight attributed to theoretical and practical training in their journey to the judicial courts.

Interviews

The interviews aimed to develop a deeper understanding of some topics included in the questionnaire. Content analysis identified two main categories relevant to the comprehension of what a good judge is: one most related to the role of sentencing (personal challenges, standard experience rules, and the role of the judge) and one related to judges' aspects (training and life experience). These topics intersect the domains and characteristics of a good judge, which are included in these, as analysed above in the exploratory factor analysis of the questionnaire.

Personal challenges

This category relates to situations that present the most difficulties to judges when sentencing, both at the level of defendants and crimes. It complements the questionnaire results when judges establish the dialect between the human and the technical domains on the sentencing. Although some processes have been described as incontrovertibly arduous, the difficulty resides much more in the human than in the technical domain since 'The technique is always possible to overcome with some effort and investigation (…)' (Judge 7) compared to the human dimension.

> The human thing, the human part, is very … Well, it gets to us more, doesn't it? (…) even though, let us say, I got more emotionally involved with the case, in the sense that it touched us more, they are not the ones that are more difficult to resolve. But maybe they are the most difficult to manage, you know? (Judge 9)

Judges reported whom they considered to be their most difficult defendants based on several features. First, they highlighted the situations when the defendants' behaviour

disturbs the trial. Magistrates also referred to the early starter offenders who come from problematic families and social backgrounds and whose rehabilitation is arduous to achieve. Another complication mentioned by the judges was related to the difficulty of judging 'normative individuals' that commit a severe crime due to difficulty accepting the 'other criminal' as someone like them. One judge described the difficulty of judging female offenders, arguing that women show inconsistencies in their testimonies: 'Because their discourses, about some objective situation, can be, at least, mismatched' (Judge 5).

In terms of crimes, judges mentioned that the most challenging crimes are those related to disrespect for human rights and those executed with high levels of violence and cruelty, in opposition to property offences, due to the harmful consequences of the former: 'I think that the most complicated processes, at my point of view, are those that affect persons directly' (Judge 2). Accordingly, sexual crimes were mentioned as difficult to judge, especially when children are involved, namely because it implies a successive repetition of the facts, which is felt as painful and a challenge to obtain the testimonies. This difficulty is particularly felt when judges are parents themselves. For example:

> Are those aspects on a psychological level … We are human beings, aren't we? They affect us. There are certain situations that impact us, right? There are ruthless acts that go far beyond what is normal and are extremely cruel to the victims. And what we necessarily think, especially when we have children, is that it is tough for us to forget afterward. Only time helps us to forget. (Judge 10)

Additionally, judges stated: (i) fraud crimes, given the high quantities of money that they involved, and given the complexity that characterises these situations; (ii) cases with higher media coverage in a general way, and (iii) minor penal situations that due to circumstances are judged in the criminal court, which is supposed to judge the most serious crimes.

Despite all of this and the evident impactful experiences these cases bring them, judges tend to affirm that these personal difficulties do not interfere with the impartiality of their practice. For example:

> Even if possible, either during the judgment or during the decisive moment, keep absolutely over all of this, absolutely objective, and absolutely clarified and lucid in every moment. This, for me, is a reason of honour, and if I could not, it would be necessary re-think my profession. (Judge 12)

> No, it has nothing to do with the act of judging in the courtroom. It has to do with the psychological repercussions. That is where there is a difference. Yes, but it is something that doesn't, eh, that does not come through when you are doing your job. (Judge 10)

Common experience rules

The content of this category explores judges' views about the relevance of the 'common experience rules', complementing the questionnaire results by exploring the role of the experience in the sentencing decision process. This concept refers to a legal feature of the Portuguese Code that enables judges to ground their conviction on the veracity of a fact assumed to be part of the common knowledge based on a shared experience of life. It also includes the magistrates' perceptions about the possibility of this figure to open up room for high degrees of discretion. For example:

> The experience rules are related, first, with a deep knowledge about reality and trying to understand … because, if we do not understand reality, we do not understand the causes, we do not understand the people, we cannot characterise the people, we cannot do this; and if we cannot do this, we hardly can achieve a result that it will fit the person … very simple, is not it? (Judge 2)

Two different positions emerged. Some judges considered this legal feature 'fundamental' to support their decisions. For example:

> The common experience is fundamental because it allows us to frame the circumstances adequately. (Judge 6)

This form of grounding decision was also considered 'dangerous' (Judge 8), that its use should be avoided, arguing that it may be nothing more than 'a fiction' (Judge 8) that the legislators should already have revised. For example:

> common experience rules are a hazardous thing. Because nowadays there is no such thing as a common experience, I think there are several common experiences. I think there are half a dozen realities that are almost … we can say typical, commons. (…) I think common experience rules are beliefs, and that is why I almost do not use it, because my beliefs should be my own, and a judge should not sentence based on beliefs as is mandatory by the law and the Constitution. (Judge 8)

Judges have demonstrated three positions regarding the link between common experience rules and discretion. The first reflects a total avoidance of this influence, describing this figure and its implementation objectively and linearly. Many of these judges have argued that common experience rules only prove something with other sources of support. For example:

> But we never condemn without concrete facts, without a safe proof (…) We have to have other concrete facts, which allow us to rely on this. (Judge 6)

Judges in the second perspective, although starting from an initial refusal to agree with the influence of common experience rules on the increase of discretionary judgments, when confronted with specific situations and their limits, ended up agreeing with the possibility of such a discretionary effect. For example:

> Here, discretionary does not arise in this situation (…) I do not think in discretionary, maybe, because I never do this (laugh). However, yes, maybe it is. I admit that some judges do, yes. (Judge 1)

Judges in the third position openly assumed that this legal figure allows for excessive discretionary and personal subjectivities. This is in line with the idea that the limits of considerations based on common experience are difficult to establish and allow for abusive and extrapolated considerations when judging the veracity of the facts. For example:

> A bolder appreciation occurs many times when resorting to common experience rules, for example, through the condemnations based on this rule. (Judge 12)

Several judges mentioned that the correction of the attitude of the judge is the most efficient way to prevent these common experience rules from becoming excessive forms of discretionary power. For example:

> I think that, with well-meaning people, in certain situations, you can still resort to this because, in fact, there are situations where, according to the rules of common experience, if one thing has happened, it is acceptable that another has happened. (Judge 8)

> The system is, by definition, imperfect in achieving its objectives, in the way in which penal reactions are applied and in the way in which, as eh, this has a great dimension of subjectivity, whether you like it or not (…) in essence, the credibility of the system lies there, in the conscientious posture of those who interpret the function of making a judgment. (Judge 12)

One magistrate (Judge 4) brought up an additional point, namely that common experience rules may, besides increasing this discretionary effect, hinder the credibility of some situations that have happened but are unusual in the common experience. In other words, this position suggests the possibility of common experience rules resulting in an inflexible thinking pattern or difficulty in considering situations outside the judges' belief system.

The role of the judge

This subcategory addresses the sentencer's role, and, the participants underlined the need for social media and society to realise and accept that the law determines the limits and boundaries of their practice. For example, according to our law, if someone admits he/she is guilty but the facts are not found at trial, the court must acquit the defendant. This is mandatory by law but is felt by the public as unfair, which some of these judges seem to empathise with and even get frustrated by.

Even so, many other aspects referred to the functions of those who judge, including managing people during the trial and interacting with those directly involved in the processes and public opinion. A judge (Judge 8) highlighted the importance of remembering that his/her task is to judge a moment in a person's life rather than the person itself.

Several personal characteristics were mentioned that should not be present in these professionals, setting the requirements to be a judge as an almost unattainable condition for human beings. For example:

> If a person is prejudiced, cannot be a judge … If a person is a liar, they cannot be a judge! An individual … altered, resentful, hateful … cannot be a judge. A person who seeks power by power, status by status, and money by money cannot be a judge. A person who is not sensitive enough cannot be a judge. An intolerant person cannot be a judge. (…) I often say that to be a judge, a judge cannot pretend to do individual justice. (Judge 8)

When describing how a judge should be, several judges revealed the belief in the possibility of simply erasing any intuition and bias, which goes against human cognitive functioning and limitations. For example:

> You can have them or not, but no, I delete the intuitions, no, I do not like having them, I do not want to have them, and I delete them, pure and simple. I look at what I have to aim for and decide. Moreover, that is what I think I have to do. (Judge 7)

> If you are prejudiced, you cannot be a judge. A prejudiced judge is the opposite of being a judge! (Judge 8)

On the contrary, there are also judges holding an opposing view, namely sharing the belief that judges should hear their intuition, that the other group denied existing, and that it is impossible to be free from pre-formed ideas. For example:

> The judge's role is to observe the whole ensemble, not just to listen to the words. That is why the judge has his senses and has to have them sharp, and maybe he also has to have a sixth sense, like you ladies have, to see if there is harmony in the ensemble. (Judge 8)

> But you cannot erase from people's brains the pre-formed ideas, the a-prioris of things, can you? For example: 'Those guys are all fucking around … When I catch them and all … ' And that is how it is in many places. I have no doubt, I do not, and I know it is like that. (Judge 2)

Life experience

Life experience is also referred to as having an important role in judges' professional quality and a significant influence on their legal decisions. For example:

> (…) a judge to be good, has to be a judge with life experience (…) we have to have a considerable body of experiences that allow us to understand what happens around us. (Judge 4)

> It influences a lot and, eh, but not only the life experience, the maturity of the judge as well. A judge as a person, a real person. In weighing up and understanding the other person's facts, the person we have, the victim, the defendant. Eh … it has everything to do with the life path that the 'judge-person' has had up until the moment he is judging case by case, over the years … that's very noticeable. (Judge 10)

Contact with social diversity is considered by some judges to be fundamental, resulting in different abilities for being sensitive and

empathetic with the different lifestyles that may come to trial. For example:

> Who only knows the law, not even knows the law. (Judge 8)

> it's not that they're better or worse technically than me, or that they have more or less experience, it's just that it's essential for people to go out and see what's going on, isn't it? It's not essential, but for someone who's been through it like I have, so I wasn't born into a rich family, quite the opposite, so I've been through another kind of experience, haven't I? I always went to public high schools where I got along with everything, I got along with privileged friends, I got along with the kids from the neighborhood around me, so, I mean, all of this I think made me grow up a bit as a person. (Judge 11)

Accordingly, life experience is expected to give judges abilities to understand the human beings that are being judged because 'books can give us much knowledge (.) (but) they do not allow us to know how to evaluate people!' (Judge 4). Similar comments were:

> all of us in personal terms, certainly, there are things we've done that we wouldn't do again, we wouldn't repeat, and why is that? because we've learned, we've had new experiences (…) and therefore the richer we become in terms of experiences, the better it will be. (Judge 3)

> Life has to be lived (…) all the adventures, (…). (Judge 4)

Understanding life is not seen as much as a question of age but as multiple and vital experiences. Reflections on this point included:

> the excessive youth of someone who is going to appreciate behavior and who sees the world in black and white, for example, a person who has the idea that there are good guys and bad guys – you know? – I think it's important, just as life experience is important for everything. Because I think that one of the most important things for a judge should be the ability to listen, to understand … to decide with common sense, with thoughtfulness. And sometimes this isn't acquired with age, which some people don't have, never have, and are imponderate until the end of their days. (Judge 9)

> And as we move forward, we become living libraries – don't we? – in terms of experience, culture, knowledge and the repository of … of the journey we've made and what we've acquired. (Judge 12)

One judge even argued that those who have never had to 'fight for anything in their lives' and who do not know 'what is a fuss in a bar at night' cannot have 'the same degree of impartiality towards someone' (Judge 11) from a different social class.

However, judges also noted that the idea of the fully dedicated judge, who sacrifices personal life and friends to work constantly is encouraged both professionally and institutionally. For example:

> The judge must convey the idea that he/she is a very sacrificed person. (Judge 8)

Training

Judges are very critical of the training they receive. Given the failures pointed out, some judges harden their criticism using terms such as 'vanity fair' or 'a lack of humility' (Judge 8) to refer to the initial training institution. In contrast, others assume an attitude of resignation, arguing that it is impossible to do much more than what is done:

> I do not think that any institution in the world can do this (…). I think that no one can teach how to judge. (Judge 3)

Judges directly criticised the selection process and the teaching methodologies and approaches. Training is seen as too theoretical, simply reinforcing what they have learned in the law degree. In contrast, their prior expectations about training were linked to the analysis and discussion of real judicial cases and sentencing simulations:

> It should not be about memorising what great lawmakers said 50 years ago. (Judge 8)

This training period should serve to acquire practical skills on, for example, how to weigh the quantum and the quality of evidence, encourage common sense and responsibility, and inculcate and exercise fundamental principles such as independence and impartiality:

> That is not a house that encourages common sense, reflection, respect for all the intervening parties, for the people involved, that instills a set of principles in the exercise of the profession and that, obviously, instills the exercise of a responsible magistracy, exempt for the Public Prosecutor's Office and independent for the judge. The culture of independence should begin at the [training center]. (Judge 8)

Training should also deepen previous theoretical knowledge on applying ethics and deontology to professional practice, with some judges noting:

> we lose perspective on what's around the book, people who are very attached to books are very cultured, but they can lose perspective on reality, because the book is a static reality. (Judge 12)

> They [training center] should invest in ethics, deontology, cultural development (…) because a navel-gazing judge is a judge who knows nothing. (Judge 8)

Some judges also noted that training should also respond to specific situations, stating, for example that:

> A new law is approved? Let us discuss it. (Judge 3)

The internship (part of the training period) is considered the most important moment of their training, allowing them to discuss legal cases with the judge-trainer:

> (…) having someone by our side (…) who would say to us 'calm down, let us think better'. (Judge 4)

The limitations identified in the training period led judges to place the onus of those essential skills on each individual, with some stating that:

> A judge who does not have a set of basic characteristics to be a judge cannot be one. (Judge 8)

Some judges noted the idea of relying uniquely on the will and availability of each professional to develop these essential skills instead of being assured by standardised and intentional training:

> The person itself has to (…) try, every day, to make an effort to improve because it is not with a couple of days of training that he/she achieves that. (Judge 3)

In some responses, training is associated with the 'judge profile' concept. Training (and the training centre) should serve as a sieve to screen out those judges who do not have a profile to be one, even though judges themselves do not know what it is:

> They (the trainers) talk about 'the profile' but honestly, I still do not know what the judge profile is. (Judge 1)

However, some candidates feigned their behaviour and appearance to try to live up to what was expected of a judge:

> Some judges in training play the role and play it very well. (Judge 1)

The selective role of the training centre should be necessary because 'training will ever have the ability to add much more to what people already bring' (Judge 4).

Despite the widespread criticism of the initial training period, continuing training was thought to be an important factor in updating (e.g. procedures and new laws) and reflection:

> (…) to study the evolution of the legislation and court proceedings, analyse the comparative law, and stop to reflect.

> (…) we cannot have judges who still do not notice certain legislative developments (…), do not know how to read a rule, and do not care. (…) judges who apply the law without the slightest awareness of what they are doing! (Judge 8)

Some judges defended the mandatory nature of this continuing training and the importance of judging with a humble attitude because 'it is necessary to tell them (the judges): you are not divine, you are human. Go to school again' (Judge 8). Similar comments included:

> when after 20 years you go back to the school bench for a while, it's done me a lot of good, because I've re-evaluated things that I already thought were settled. Right? There you go. And I think that's always good. That continuous training you have to have. (Judge 7)

Surprisingly, common sense is associated with training:

> one of the things the director (of the training center) (…) always liked to say was that you did not need to know much about law, (…) you need common sense, common sense, he repeated it a thousand times. (Judge 1)

Discussion

This mixed-methods study is intended to bring to consciousness what judges consider influential for a good performance in their profession. To determine a sentence, a judge must consider several factors, such as personal, social, moral, and emotional aspects (Bennett & Broe, 2010); hence, the study aims to analyse their perceptions regarding which factors are more relevant or prone to contribute to what a good judge's performance and skills are.

The questionnaire results reveal that although most judges converge to the median for most items in all categories, considerable dispersion across values was also found, as in other studies with judges (e.g. Castro Rodrigues et al., 2019). Judges considered both common sense and comprehensive perspectives towards social factors to be important characteristics of a good judge, even though they may be perceived as opposed to one another, which demonstrates how current results reflect the illusion of objectivity (e.g. common sense tends to simplify reality, and a comprehensive perspective tends to make more complex that same reality). The characteristics that judges identified as defining a good judge are based on experiential aspects, which is notable because judges are a professional collective who tend to be particularly privileged (e.g. income, specific rights, professional prestige) but also less experienced due to some imposed occupational limitations of the job (e.g. prohibition of political activities). These circumstances derived from their professional status could alienate judges from ordinary citizens and ordinary social and life experiences, limiting their comprehension of certain social realities.

Moreover, judges tended to disregard emotional factors such as empathy, compassion with the victim and offender, and emotional involvement with the case, as features related to the quality of judging, corroborating the view that sentencing is considered a more logical than intuitive practice, even though research on legal decision-making has been increasingly recognised the critical influence of emotions in this process and other legal processes and decisions, challenging conventional perspectives of law as purely rational and objective (Maroney, 2006). However, being impartial requires personal involvement and positive interactions that enrich the sentencing rather than compromise it; therefore, emotional dimensions and impartiality are not incompatible (Mack & Anleu, 2011). So, even if judges tend to minimise the importance of the emotional dimension for a good sentencing practice, the emotional domain and empathy have been proven to be essential in sentencing, as the ability to understand others' perspectives, which does not imply that emotion creeps into

decision-making (Chin, 2012). Moreover, empathy and emotions are closely related to life experiences, which were valued in judges' responses, but, in contract, were the least valued elements of perceived good decision-making; replicating other research findings that there is a tendency for judges to diminish the role of emotion in judicial work (Leben, 2019).

In the interviews, judges shared that they experience personal difficulties during their practice and refer to emotional issues as more difficult to manage than the technical and juridical issues. The emotional and personal dimensions of the processes might require the management of defendants with destabilising behaviours and in wretched situations or the need to cope with the crimes and the victims involved. Violent and sex crimes were noted as more difficult to judge since they require more legal and technical complexity and, at the same time, might trigger more individual and emotional responses and are more prone to criticism from public opinion (Bumby & Maddox, 1999).

Interestingly, the emotional features of sentencing decision-making create more personal difficulties. Although several judges claim to attempt to eliminate emotion from their decision-making, judges appeared still vulnerable to emotional reactions. This suggests that sentencing might be more than the mere application of the law. This demonstrates an impression management desire of judges to suggest that judicial decision-making and justice as is a more introspective, individual and controversial practice that is often thought.

During the sentencing process, judges have the need and obligation to consider a series of aspects according to the particularities of each situation, as the law defines it. In addition, judges also attend to legal figures, such as the rules of common experience, that require their personal consideration of the aspects. Therefore, balancing the law and personal considerations complicates the sentencing process, compromising its linearity. Ultimately, there is a movement that dictates the individualisation of the sentences and their attribution according to the determinants and idiosyncrasies of the criminal act and the offender, serving the humanitarian purpose of adapting the penalties to the particularities of each situation. Because of that, the sentencing process is more than a legal equation or the mere calculation between factors, and several judges acknowledge a role for subjectivity and for identifying and avoiding potential bias. The rules of common experience allow plausible reality to be considered, evoking the 'average man' position. However, we should account for the fact (and some interviewee responses also illustrate) that judges are mainly trained in analysing legal features and are considered experts in that domain (Wessel et al., 2006).

Nevertheless, their expertise is frequently and erroneously assumed by the judges themselves and others to be extended to other domains, such as social reality (Wessel et al., 2006). This assumption is based on the more traditional view of justice and judging such as skills taught during their training. The current sample stresses the importance of discussing new laws rather than sticking to what the legislature defined years ago. Moreover, previous findings on judicial officer characteristics were primarily based on hypothetical cases. Judges have discussed the importance of training that is not centred only on memorising laws or decrees. Hence, training should also be focused on real situations, which can be done via peer supervision, along with emotional awareness that can only be genuinely assessed and regulated if incorporated into procedural justice (Leben, 2019). Furthermore, judicial cases are often characterised by ambiguity and uncertainty, which should be preserved in real-world settings. However, the necessary problem-solving skills applied to the real world (and moral reasoning) are not taught in law school or later training (Tumonis et al., 2013), even if common sense is stressed as a vital feature in the interviewees' narratives.

The decision-making process is based on the interpretation of the meaning of the law, that is, 'the law set standards (…) how the

law applies to a particular case requires the exercise of judgement' (Sharpe, 2020, p. 92). It does not impede accountability of the influence of training, professional experience, and personal variables in the process (e.g. Gillman, 2001) or personal experiences or background (Weinberg & Nielsen, 2012). The law is not mechanically applied, as current data shows. In fact, 'a judge is more likely to reach a just answer if he or she cares' (Chin, 2012, p. 1580) because rational thinking accommodates emotions (Tumonis et al., 2013). Similarly, intuition, although less valued than common sense, was considered a predominant part of judges' decisions, although some denied allowing it to be expressed in their practice. Nevertheless, the literature points to other factors influencing intuition (e.g. Hoffmann, 2020; Tumonis et al., 2013), such as education, upbringing, personality or beliefs, and training, as in the current study.

The interviews also revealed domains where judges demonstrated psychologically naïve legal assumptions about how humans think, feel, and behave (Maroney & Gross, 2014).

Judges aligned with several of the fallacies systematised by Dror (2020), such as the Expert Immunity Fallacy (believing their experience and training render them immune to bias, ignoring evidence that expertise does not safeguard against cognitive biases), the Illusion of Control Fallacy (the overestimation of the effectiveness of judges' awareness or ethical commitments in counteracting unconscious biases), the Bad Apples Fallacy (the idea that biases are due to a few incompetent colleagues), and the Blind Spot Fallacy (recognising biases in others while being blind to one's own, leading to a false sense of objectivity). These results also seem to reflect several biases described by that author (Dror, 2020), namely contextual bias, confirmation bias, role effects, groupthink, personal bias, human and cognitive factors, and overconfidence bias. Dror (2020) emphasises that these biases can affect decision-making, including data collection, analysis, and interpretation. In addition, all the fallacies prevent judges from recognising the pervasive role of implicit biases in their decision-making, particularly in emotionally-charged contexts such as criminal sentencing. Dror advocates for specific measures to mitigate these biases, such as implementing blind procedures, promoting awareness and training, and fostering a culture encouraging critical evaluation and transparency. This framework is particularly relevant to understanding how implicit biases can influence judicial decision-making, highlighting the need for systematic approaches to identify and mitigate such biases.

Our results also show that judges who align with the myth of the dispassionate judge and opt for maladaptive strategies (denying the existence of, believing in suppression of, or erasing, intuition) instead of adaptive ones. However, as Maroney (2006) advocated, a good judge integrates emotional intelligence with legal expertise, embracing emotion to enhance fairness and build trust rather than suppressing it or allowing it to dominate. Understanding the interplay between law and human emotion helps judges interpret behaviour and navigate the social context of cases, which is essential for just sentences and decisions tailored to defendants' circumstances. As such, the ideal of the dispassionate judge needs to evolve to integrate the inevitability and even utility of emotions. Proper emotional engagement is more effective than denying the presence of emotions or trying to suppress emotions in sentencing decision-making. Judges should learn to regulate and manage their emotions effectively, ensuring these feelings inform rather than distort their decisions (Maroney, 2006; Wistrich et al., 2015). As such, judicial training programs should promote judges' emotional regulation, teach effective strategies, and emphasise techniques like reappraisal rather than suppression (Maroney & Gross, 2014). The legal system must account for emotions' influence while educating judges on the importance of

emotional regulation and self-awareness to maintain impartiality and fairness (Wistrich et al., 2015).

This compounds cognitive change, which, aligned with the promotion of emotional disclosure, seems to be the most effective way to manage the inevitable (and desirable) emotional parts of sentencing decision-making processes (Maroney & Gross, 2014). Addressing these topics is as important as legal and procedural ones and should be addressed in academic and long-life training. We advocate that judges shall not be individually responsible for these processes; the judicial system should intentionally address them. Society should not take these skills for granted or expect judges to bring this self-development state to their professional practice; instead, they should assume this as a training component, as important as legal ones.

Besides, the ideal of the dispassionate judge, besides being unrealistic to achieve, it might also encourage maladaptive behaviour, working as a barrier to the flexibility that is necessary for an adaptive judicial emotion regulation (Maroney & Gross, 2014).

In contrast, it is essential to raise judges' awareness of the impact of subjectivity on their sentencing decision-making and their belief systems about legal outcomes (Drobak & North, 2004).

Although the findings of our study are relevant, some limitations may be pointed out. First, the sample size is small; yet we must underline that the 49 judges who participated in the questionnaires correspond to all the eligible judges from the criminal courts of three main cities of Portugal, representing distinct geographical areas. Second, studies based on inquiry methods are susceptible to social desirability. Nevertheless, to minimise this, we opted to implement interviews, which tend to minimise this phenomenon by their spontaneous nature, mainly when conducted after trusting relationships are established – as was the case.

Future studies in the field should explore the relationship between emotion, empathy, and intuition, controlling the participants' years of experience due to its documented influence on decision-making (e.g. Tumonis et al., 2013), potentially contributing to changes in training according to difficulties experienced, for example. Practice can benefit from accommodating judges' perceptions into continuous training and from senior professionals discussing complex and ambiguous cases with less experienced judges. More experience does not imply better decision-making, and years of experience, although valuable, do not certify a judge as a better decision-maker (cf. Tumonis et al., 2013). The fact that judging comprises low validity in a low-feedback environment is also demonstrated by the need to have someone helping to analyse and discuss cases, which is another way of accommodating professional performance (e.g. Rachlinski & Wistrich, 2017; Tumonis et al., 2013), and receiving external but also informed feedback.

Sociodemographic characteristics can influence empathy (e.g. race, gender, socioeconomic status), which should be analysed in future studies, and whether the type of crime/defendant features influence the decision.

Judges' political ideology and the effect of gender, race, and religious values should also be controlled. Those factors can influence decision-making, but only if the case implies similarities with individual beliefs (Rachlinski & Wistrich, 2017).

Conclusion

Although some limitations are noted, this work reveals important insights about how judicial officers think about their sentencing decision-making. Variables susceptible to implicit bias, such as the emotional and idiosyncratic aspects of the cases, are part of the sentencing process. Therefore, how they are included and pondered must be intentionally clarified both in the training and in the reconceptualisation of the law. Literature has demonstrated, and so did some judges, that they are not immune to emotions, they are not

machines, nor are they enlightened – and they are not supposed to be. It is not desirable that sentencing and justice work that way. We advocate for the importance of identifying possible fallacies and biases and working on these spaces so that they are not entirely taken by common sense and prejudices but instead grounded by technical knowledge, especially in the psychological and social domains.

The problem with common sense is that there is still debate whether it means judicial decision-making with its less biased components considering reasoning as a cold, rational, and pure logical activity or if it can accommodate judicial features and also intuition, life experience, and emotions (Tumonis et al., 2013). Cognitive reflection tests for assessing judges' performance show their inability to cope with suppressing intuition. Real case analysis demonstrates how judges simplify decisions using the intuitive process (Rachlinski & Wistrich, 2017). In the current study, intuition was valued as one of the characteristics of a good judge, but, in practice, it cannot be the most influential, hence articulated with other features, since intuition can lead to judgement errors (Rachlinski & Wistrich, 2017).

The role of a judge and the sentencing task were described in the interface between two opposite points of view: the impression judges want to give of justice as formal and legally-based and the reality they end up exploring and assuming – more introspective, individual, and controversial. Some judges considered sentencing a logical and methodical process based on fulfilling formal procedures.

Hence, is there neutrality in the law's applicability? The decision process expected by law is expected to help achieve similar behaviours, which would lead to elevated predictability on judges' mechanisms to decide; nevertheless, as reported, sentencing is a complex process susceptible to a wide variety of aspects that influence other human decision-making domains. Therefore, judges should be questioned about and heard regarding their views on sentencing and the judicial decision-making processes and, as a result, should develop an awareness of these sometimes unexplainable limitations and integrate them into their training to regulate and improve their practice, which inevitably must include fostering cognitive change and emotional disclosure, grounded on the development of effective emotion regulation strategies.

Ethical standards

Declaration of conflicts of interest

Andreia de Castro Rodrigues has declared no conflicts of interest.
Ana Rita Cruz has declared no conflicts of interest.
Olga Cunha has declared no conflicts of interest.
Niamh Maguire has declared no conflicts of interest.
Ana Sacau-Fontenla has declared no conflicts of interest.

Ethical approval

All procedures performed in studies involving human participants were in accordance with the ethical standards of the following research committees: Foundation for Science and Technology (Fundação para a Ciência e a Tecnologia, with the reference: SFRH/BD/46202/2008) and Portuguese Superior Council of Magistracy (approval reference number Proc° n° 08-1197/D) and with the 1964 Helsinki declaration and its later amendments or comparable ethical standards. (These two bodies have the role to verify if the projects submitted comply with all the relevant ethical rules and principles, namely stated in the Helsinki Declaration). Studies with human participants (including in vivo or active human participants and inactive human participants through file records, archival information, or other documentation relating to humans).

Informed consent

Informed consent was obtained from all individual participants included in the study.

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