

# Equality and Cultural Diversity in the Practice of Domestic Courts in Southern Europe

## The Portuguese Case in Comparative Perspective

Patrícia Jerónimo

Jean Monnet Fellow



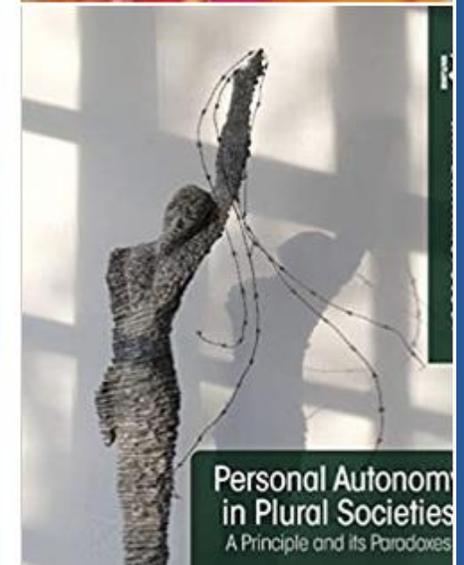
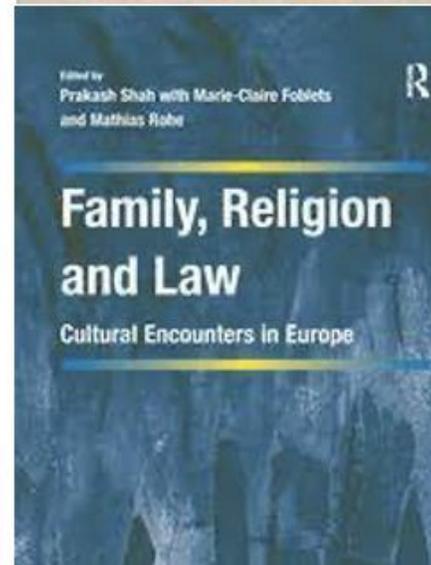
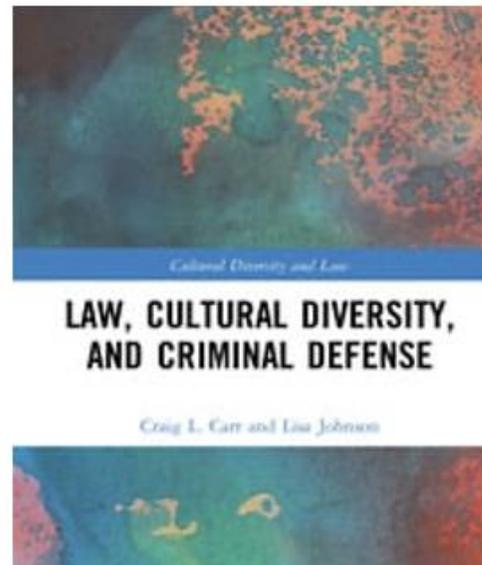
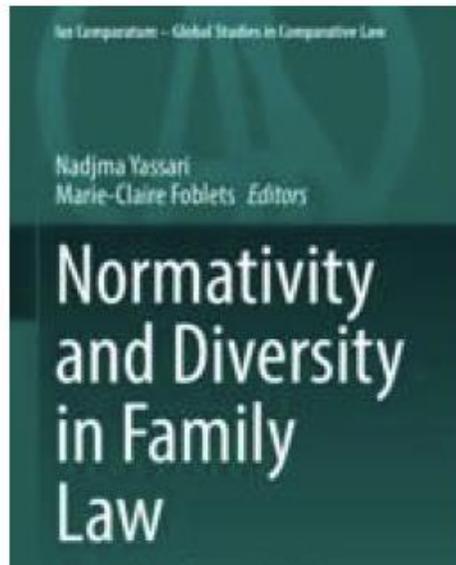
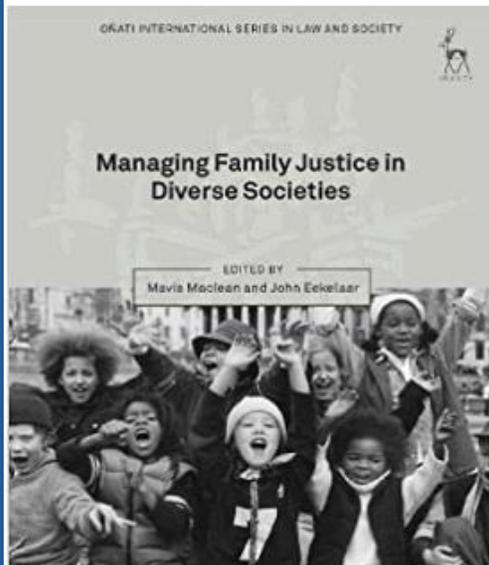
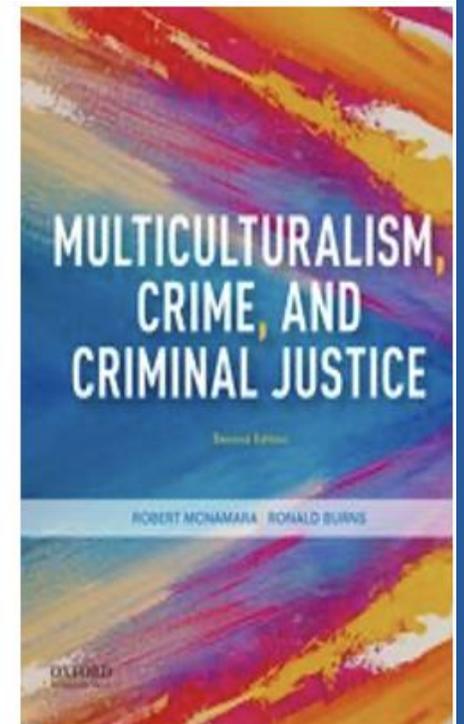
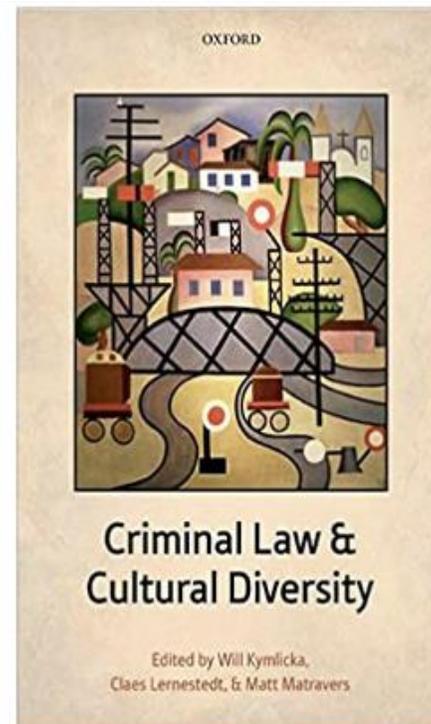
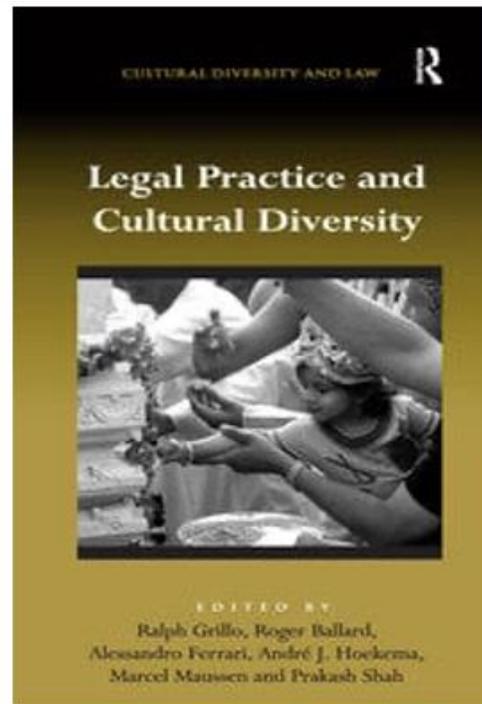
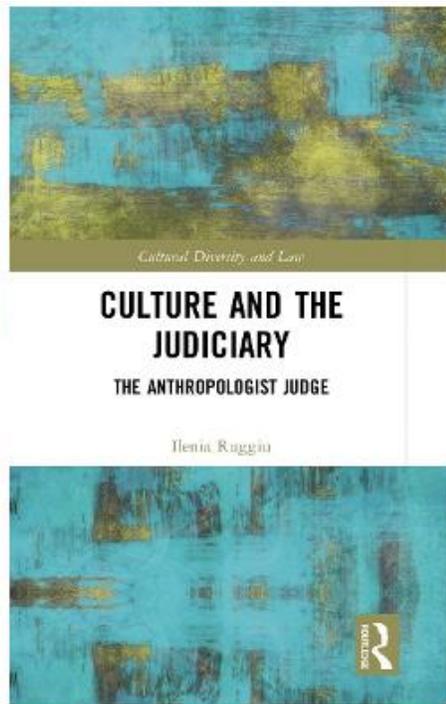
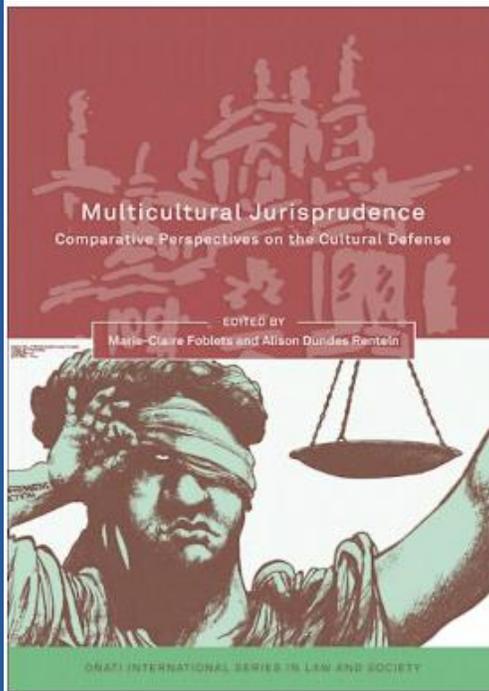
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# Overview

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2. InclusiveCourts
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  - 2.2. Research questions and methods
  - 2.3. Preliminary findings
3. Next steps

# Theoretical background



## Intersection of different research strands under the heading Multicultural jurisprudence

- Cultural defence
- Minority rights, religious freedom
- Legal pluralism (PIL, minority legal orders)
- Lack of diversity in the judiciary/implicit bias/empathy
- Racial discrimination in the justice system
- Training of judicial actors (e.g. intercultural communication, work with interpreters)

# InclusiveCourts

THE PROJECT

# InclusiveCourts culture

An inventory and critical assessment of the multicultural jurisprudence of Portuguese courts from 1976 onwards.

[Read More](#)

# Scope and objectives

Portuguese diversity-related case law  
All jurisdictions  
Since 1976

Identify the types of cases that make up the multicultural case law of Portuguese courts (legal subjects, extra-legal arguments, groups involved)

Assess the language and reasoning by the judges in these cases

Understand how the judicial actors (judges and prosecutors) perceive these cases

Build a data base of annotated case law

Design a training programme for judicial actors

# Research questions and methods

What types of cases are most common in Portuguese courts?

How do courts explain themselves in their reasonings? (language, legal and extra-legal arguments, sources)

How do judicial actors perceive this type of cases?

How do other stakeholders perceive the courts' performance?

Case law selection

Review of selected case law

Online questionnaire (judges and prosecutors)

Interviews (judges and prosecutors)

Focus groups (judges, prosecutors, attorneys, representatives of civil society organisations, interpreters)

# Case selection

Open access data bases:

<http://www.dgsi.pt/>

[https://www.pgdlisboa.pt/jurel/jurisprudencia\\_main.php](https://www.pgdlisboa.pt/jurel/jurisprudencia_main.php)

<https://www.direitoemdia.pt/>

Other sources:

news media, literature, interviews



# Review of the case law

Assessment by reference to international human rights standards, constitutional law, multicultural jurisprudence literature

Attention to:

- Language
- References to international and foreign law
- Extra-legal references
- Reasoning (balance equality and cultural diversity)



SCHOOL ABSENTEEISM | ROMA ETHNICITY | PROPORTIONALITY PRINCIPLE  
| STRENGTHENING SCHOOL-FAMILY RELATIONS | MEDIATORS

Évora Court of Appeal, proc. 1674/18.1T8TMR.E1, 09.09.2021

Jurisdiction	Civil
Subject	Child protection
Rapporteur	Maria João Sousa e Faro
Ruling	Grants the appeal, overturning the appealed decision, which had ordered the children's placement in a home, reprising the previous measure of support to the parents, with an increase in the school's involvement, under terms to be defined after hearing the school's board.
Domestic law	Constitution [Article 67(2)(c)] Law on the Protection of Children and Youths at Risk, approved by Law No. 147/99, of 1 September 1999 (Article 4) Code of Civil Procedure [Articles 608(2), 609, 635(4), 639, 663(2)]
International law	Convention on the Rights of the Child [Article 9(1)]
Foreign law	n.a.
Keywords	Roma ethnicity; strengthening the relations between the school and the family; mediators at school; understanding the family roots and culture; natural life context; situation of danger; school absenteeism; parental incapacity; fundamental values of life in society; development of personality; Roma community; specific values and convictions; family of Roma ethnicity; specific cultural rules, traditions and principles; ingrained habit; Roma community's history of persecution and exclusion; attempts at



# Interaction with key stakeholders

Online questionnaire applied to 212 respondents (78,3% judges, 21,7% prosecutors; 63,7% women, 35,4% men)

Focus groups with judges, prosecutors, attorneys, civil society organisations, and interpreters (eight participants each, diversity of geographic basis and gender)

Semi-structured interviews with 33 judges and 22 prosecutors (ongoing)

## Main questions

- Frequency and types of cases
- Use of cultural arguments and cultural evidence
- Challenges associated with this type of cases
- Competences of judicial actors to act in multicultural settings

# Preliminary findings

## Case Law



**Porto Court of Appeal, proc. 135/14.2GAVFR.P1, 10.05.2017**

FRAUD | THEFT | CRIMINAL OFFENSES COMMITTED BY MEMBERS OF ETHNIC MINORITIES | SPECIAL



**Coimbra Court of Appeal, proc. 109/09.JACBR-A.C1, 14.10.2009**

DRUG TRAFFICKING | PRETRIAL DETENTION | EXTREME MOBILITY OF ROMA POPULATIONS...



**Constitutional Court, judgment 255/2004, 14.04.2004**

CONSTITUTIONAL APPEAL | PRETRIAL DETENTION | ROMA MOBILITY

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### SEARCH

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### SEARCH CATEGORIES

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### KEYWORDS

[SCHOOL DROPOUT \(5\)](#)

[DEFENDANT WHO DOES NOT UNDERSTAND PORTUGUESE \(1\)](#)

[BAPTISM \(1\)](#)

[FEATURES OF THE CULTURE \(1\)](#)

[CATECHESIS \(1\)](#) [ROMA \(1\)](#)

# Inventory and review of case law

- Over 600 judgments and counting
- Most common cases by legal subject: Child protection, parental responsibilities, domestic violence, sex crimes against children, drug trafficking, asylum, review of foreign judgments, places of worship
- Most common cases by group: Roma, Africans, Jehovah Witnesses, Brazilians
- Use of stereotype-reinforcing language (gender, ethnicity, religious minorities)
- Accommodation of cultural specificities (e.g. Roma marriages, early school leaving)
- Recognition of cultural diversity as worthy of respect but prevalence of equality
- References to international human rights standards: not common
- References to foreign law: not common, except in PIL cases
- Sources: (over)reliance on social reports

# Questionnaire

- 93,4% said they never or hardly ever dealt with cases involving **religion**
- 71,1% said they never or hardly ever dealt with cases involving **ethnic or racial**-related issues
- 51,9% said they never or hardly ever dealt with cases requiring assistance by **interpreter**
- 37,8% said they never or hardly ever dealt with cases involving **foreigners**; 38,3% have some experience with this type of cases, while only 6,7% deals with this type of cases often
- 68,1% said they give some or much importance to the **cultural information** brought to court to understand the parties' sociocultural context

# Questionnaire (cont.)

- **Most common cases:** crimes against or by foreigner (68%); application of foreign law (67,5%); early school leaving (40,4%); crimes against or by member of ethnic minority (39,9%)
- **Most common sources of information:** information submitted by the parties (89,7%), common sense and life experience (81,3%), academic literature (56,2%),... social reports (4,4%)
- **Witness testimony on cultural information:** never (47,6%), social assistant (42,2%), psychologist (30,6%), community leader (11,7%)
- **Relevance attributed to the testimony:** some or much relevance (56,6%) v 72,8% for social reports
- **Quality of legal training:** only 32,3% said that it is good or very good; several suggestions for improvement

# Focus group – judges

- Wide variety of cases (legal subject and groups, but recurring reference to Portuguese and foreign Roma)
- Openness to cultural arguments, albeit often not explicit in the rulings
- Cultural diversity v regional diversity
- State law v Roma law
- Rare use of extra legal sources – reliance on parties' information and common knowledge
- Language barriers/work with interpreters
- No specific training needs

# Focus group – prosecutors

- Mostly crime and family matters (cultural factors more relevant in the latter), also immigration, asylum and nationality – many foreign nationalities, but main focus on Roma
- Cultural information relevant and challenging, but courts well equipped (regional diversity)
- Need to understand the other but also obligation to integrate and risk of abuse
- No racial prejudice/inclusive approach v impossible neutrality/unconscious bias
- No need for extra legal sources – common knowledge of cultural specificities
- But need of a pool of experts to assist the courts
- Language barriers/work with interpreters
- Some satisfied with available training, others not

# Focus group – attorneys

- Discrimination against Roma, foreigners and religious minorities (e.g. language, lack of sensitivity, indifference, assumptions about recidivism) – often not perceptible in the rulings
- Worst in higher than lower courts; situation improving with younger generations (some participants less optimistic)
- Cultural diversity is not often the subject of the cases, but some mentioned that they have provided cultural information to the court (videos, expert testimony by sociologists, religious leaders)
- Judges' unwillingness to consider racial motivation (criminal offenses, labour discrimination) – victim's choose not to invoke it, except in strategic litigation
- Language barriers – lack of interpreters; refusal to appoint interpreter for Crioulo
- Need to focus on training for judicial actors

# Focus group – civil society organisations

- Few organisations have direct contact with the judicial system, for lack of resources to provide legal assistance and/or lack of mediation channels
- Some organisations give moral support by accompanying people to court
- Some organisations host community work under protocols with the Ministry of Justice
- Most consider that there is prejudice against Roma and foreigners in the judicial system
- All point out that there are language and cultural barriers

# Focus group – interpreters

- Most participants are hired by attorneys or translation agencies, not appointed by the courts
- Some render services in court several times per month, others more sporadically (3 or 4 times per year)
- Subpar work conditions: low pay and short-notice (for court appointed interpreters), lack of facilities for simultaneous interpretation in most courts, no prior information about the cases, no office
- Some admit they are not always neutral
- Misunderstandings about the role of the interpreters (by the courts and by the interpreters themselves)

# Interviews

- Interviewees have some experience with diversity-related cases and provide examples (although these cases are a small percentage of their work load)
- Openness to cultural information combined with the argument that the law is equal for all
- Reliance on the information brought by the parties
- Reliance on social reports (but acknowledgment of shortcomings)
- Awareness of language barriers and difficulties associated with the use of interpreters
- Not familiar with international human rights standards (particularly minority rights)
- Not familiar with the debates on multicultural jurisprudence

# Next steps

- Expand the inventory and the data base of annotated case law
- Thematic analysis of the case law
- Design the pilot training programme for judicial actors
- Strengthen the project's comparative dimension – collaborations with CURED I (<https://www.eth.mpg.de/5713411/curedi>), RSCAS' Centre for Judicial Cooperation (<https://cjc.eui.eu/>), *et al.*

# Many thanks.

For more information on the project InclusiveCourts:

<https://inclusivecourts.pt/en/>

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**FCT** Fundação  
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