

JOSÉ LUÍS DA CRUZ VILAÇA



PIONEERING

PORTUGAL'S ENTRY

INTO EUROPE

Iberian Lawyer interviewed the founder of Cruz Vilaça Advogados and one of the most authoritative figures on EU Law in Portugal

by michael heron

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Cruz Vilaça Advogados is the only boutique law firm in Portugal focused primarily on European Union and Competition Law. To say that its founder, **José Luís da Cruz Vilaça**, is an expert in this field, would be a gross disservice to his illustrious career. As Secretary of State for European Integration, in 1981/82 he led the negotiations for Portugal's accession to the EC, laying the foundations for Portugal to become a member before Spain. Having been a partner at PLMJ for 16 years and with his own firm since 2019, he advises national, European and global clients, on matters of EU, competition and fundamental rights law, as well as representing clients before the EU Courts, the European Commission, the European Court of Human Rights, the Portuguese Competition Authority and the Portuguese courts. We delve into his past and his simple wish to be remembered as someone who fought his whole life for Europe and its values.

**What were the negotiations like during the infamous period of Portugal's entry to the EC?**

It was not my first contact with EU law and integration because my doctorate in Paris was about European affairs, European integration, not exactly European Law but European economics. In view of the problems arising from our accession to the EC, at the time it was a big change for Portugal. Except

for one of the parties represented in the Portuguese parliament, all the political forces at the time and the people were in favour of joining the EC. For political reasons, to consolidate democracy after 1974, and for economic reasons: because we were quite backwards, a development shock was needed and we indeed felt as though we were Europeans, even after our experience in Africa for centuries. So, accession was for me also, the right path to take. At the same time, it was a big challenge for someone who was in his 30s, after a doctorate in Paris, when I came back and joined the Portuguese government for three years.

**You were very young during that period then?**

Indeed, very young, and while my experience was at the academic level at University, I never had really been involved in politics. I have been in charge of very challenging jobs, as secretary of state for home affairs, I was in charge of what we now would call 'the reform of the state' and then I've been secretary of state for the Prime Minister's office. I belonged then to a minority party (CDS), in three different governments led by PSD, Social democratic party, where we were the junior partners. But I had worked directly with the Prime Minister when he was Francisco Pinto Balsemão, then the PSD leader. But the most impressive and brilliant politicians I met in 1980 were Francisco Sá Carneiro and Adelino Amaro da Costa. Unfortunately, they died, while campaigning for the Presidential elections in an air crash in 1980. I flew in the same aircraft to Lisbon on the same day that it crashed.

**Can you give me an example of one or two of those topics that you were able to close during the negotiations?**

Yes, they were about some of the fundamental freedoms, not yet the free movement of goods but freedom to provide services and right of establishment and also free movement of capital. They paved the way for the subsequent advances in the negotiations. This was during the Belgian presidency at the time. This allowed me to know from inside the internal machinery of the European Community, how it worked, how complex the relationships were between the different institutions, the council representing the governments, the European parliament and the court of justice. But I mainly knew at the time the European commission, that was my counterpart, with whom we were negotiating, before taking the issues to the council of ministers for a final decision. It was interesting because at the same time Spain

was also negotiating. We signed the accession Treaty first because we applied to join the EC sometime before Spain did, we were therefore a bit older than Spain within the communities but we never had meetings with our Spanish counterparts. This was a deliberate choice because the Portuguese government felt at the time that our accession could be delayed because of the magnitude of the problems Spain could put to the EC.

**You didn't want to be grouped together like two Iberian countries because Spain and Portugal, despite sharing a border, couldn't be more different in terms of culture?**

We are good friends, I have absolutely wonderful Spanish friends and I never had the slightest problem with my colleagues at the court of justice for instance and I am still very fond of my Spanish friends. But that's true, there is something of a contentious history in the past and but we have often been distant from the Spanish culture. We jumped over Spain to go to France and our privileged relationship on the political and cultural side was with France. A lot of Portuguese people migrated

## JOSÉ LUÍS DA CRUZ VILAÇA



He has a profound knowledge of the various areas of European Union (EU) law and of competition law, as well as of issues related to the European Convention on Human Rights and the protection of fundamental rights. He was one of the

first Portuguese jurists and academics to deal with these matters when preparing his doctorate at the University of Paris I between 1975 and 1978. As Secretary of State for European Integration, in 1981/82 he led the negotiations for accession to the European Communities (EC's) and for the last 35 years his entire professional and academic career has been under the aegis of European integration, European law and competition law. After accession in January 1986, he served as Advocate General and later, between 2012 and 2018, as a Judge at the Court of Justice of the EU, where he was elected President of Chamber in 2015. Between 1989 and 1995, he presided, first by unanimous decision of the governments of the Member States and then by election of his peers, over the newly established Court of First Instance of the EC's (now, the General Court of the EU). He then left office after six years to practise law in his specialist fields for nearly 18 years. ■

to France, I lived in France for three years for my doctorate and I love France, but I also love Spain. The question was more on the strategical side because Spain already had strong agriculture that could compete with European agriculture, in particular French agricultural products within the common agricultural policy, so it took time to negotiate. That was the main reason for keeping the two processes separated. I think it might have been useful for us to coordinate action on some topics, for instance on the institutional side. It was clear Portugal was not among the big countries, but Spain aspired to be one of the big countries within the EC.

**There are some people, including political responsible, suggesting that the European law is increasingly being questioned by national EU jurisdictions-and circumvented in practice. Is this true and, if so, what can the consequences be?**

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You know, it's not new, the EU legal order, as an autonomous legal order, is a human construction. It had to be built and of course the European court of justice played the leading role in building a single, autonomous and uniform legal order which was absolutely essential and fundamental to meet the expectations right after the second world war, at the time of the setting up of the European Communities.

**Is it important for lawyers and judges from the different member states to have EU law knowledge?**

Yes it is, and the current crisis and the different transitions we are going through, also in other fields - digital, energy, environment etc - illustrate it very well. They make the values underlying EU law more visible and more necessary to achieve. As you know, nowadays a good part of the national legislation has its source in Brussels, Luxembourg and Strasbourg, so the European Union is not any longer just an economic and commercial project, it is supported by a common currency, common to 19 of its member states. It became a political entity and I think all this underlines the importance of EU law for lawyers and judges. Of course we need to increase the acquaintance of lawyers and judges with EU law as EU law makes part of our daily lives. For lawyers it is sometimes the last resort to get protection for their clients rights-you often find in EU law the answer for their problems and for the need to protect their rights. So lawyers have the active role in pushing forward the application of EU law.

**Recently, you represented the Portuguese government in a hearing before the Court of Justice in the case of the Football Super-League. How did you feel, being in the opposite bench - as a lawyer, before the same court that he served for so many years?**

Yes, I was not expecting to go back before my former colleagues at the court of justice but in this case, the Portuguese government gave me the honour and invited me to represent the Portuguese republic in the hearing. It was a subject I have come across in the recent past, so I had carefully studied the issue already. On the other hand, I fully respected the timeframe of three years set in the code of conduct for former judges and advocates general to be allowed to plead before the two European courts, as almost four years have elapsed since I left the court. In any case I called the president to ask if there was any objection and there was none.

**How would you like to be remembered?**

Probably the best way to be remembered is as someone who fought his whole life, for Europe, for European values and to help bring Portugal to the EU and as someone who was faithful to the values that are now inscribed in the treaties. ■



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