

# The power of the image in criminal law

The consequences of the nullity of metadata.

It was 2010 when, in the context of a criminal case, I argued, during pre-trial proceedings and then at trial, that this means of obtaining evidence was null and void. The argument put forward at the time related to judicial control of the transmission of metadata archived at the telecoms operator to the case.

The court rejected the defendant's claim and sentenced him to twenty-two years in prison, in addition to the offences of aggravated homicide and arson, explosions and other particularly dangerous conduct. An appeal was lodged with the Lisbon Court of Appeal, which upheld the defendant's claim regarding the alleged nullity of the metadata. As a result, a new judgement was handed down, removing all the procedural consequences of the nullity of that means of obtaining evidence. The defendant was notified to comment on the consequences of the nullity of the metadata, and replied in the following terms:

"(...), defendant in these proceedings, notified to comment on the procedural consequences of the prohibition of evidence - detailed invoicing and cellular localisation of the telephone offices identified in that order - decreed by the Venerable Court of Appeal of Lisbon, hereby states the following:

In these terms, all subsequent evidence should be declared null and void as contaminated."

In a clear application of the theory of objective imputation, the defendant was acquitted of all the offences for which he had been convicted. At that moment, I "abandoned" the theories on the contamination of evidence and opted for an original method: the image.

Sometimes a picture is worth more than all the words!