

# On the Globalization of Political Power and the Added Relevance of Institutions in Contexts of Multifaceted Populism

## Illustrated with Recourse to a Case Study of the Portuguese Justice System

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### Abstract

This paper is an essay on the problematic of the globalization of political power and on the increased relevance of institutions in contexts of multifaceted populism. A case study of the Portuguese justice system was used to illustrate the arguments presented. First, the Troika intervention in Portugal is offered as an instance of globalization of political power. Secondly, a model of argumentation analysis of political parties is used to contend that the media coverage of the discourse about austerity during the period of external intervention constituted what can be called multifaceted populism. Finally, the Directorate-General for Justice Policy is presented as an example of the decisive and increased role that institutions can play in times of crisis by presenting a factual and dispassionate vision of the results obtained at the level of public policies.

**Keywords:** globalization of political power; institutions; multifaceted populism; justice system; Portugal.

### Introduction

One of the symptoms of the increasing globalization of political power is noted in the attention, perhaps overstated, that state governments attribute to international rankings. Good ranking positions are read as legitimating the internal policies adopted. Recently, Portugal has emerged not only as one of the most peaceful and safe countries in the world, ranking fourth in the world (Institute For Economics & Peace, 2018), but also as one of the best places to live, occupying the twenty-fourth place in the world rankings (US News & World Report, 2018). Judging from these classifications, it would be difficult to see that Portugal has crossed over in the last decade an economic and financial crisis that led to an international rescue of the country, translated into the signing of a Memorandum of Understanding on Specific Economic Policy (MoU) (Portugal, 2011).

The Troika intervention, a trio of supranational entities composed of the European Commission, the European Central Bank and the International Monetary Fund, and

its articulation with the government created, at an early stage, problems in the constitutionality of decisions taken in respect of certain measures<sup>1</sup>. The controversies surrounding the democratic and constitutional legitimacy of the MoU's decisions quickly spilled over into the mediatized political speech assuming multiple forms but which, in the light of Zúquete (2018), can be classified as populist. These emerging or reaffirmed populisms, though still institutionally framed in traditional political parties and democratic institutions, highlight the decisive role of institutions as enforcers of their most radical and harmful forms.

From the MoU, a manifestation of the globalization of political power, there was a series of policies aimed at the justice sector (points 7.1 to 7.18 of the MoU), which highlighted a revision of the Code of Civil Procedure (CCP), which came into force in September 2013 (Law n.º 41/2013). At the same time as the populist arguments were used, institutions such as the Directorate-General for Justice Policy collected, far from the media spotlight, data that allowed us to gauge the effective impact of the policies adopted by the Portuguese State in this sector.

### **The Troika as an Instance of Globalization of Political Power in Portugal**

Weber (1919) famously proposed the distinction between three styles of leadership employed by holders of political power: the traditional, the charismatic, and the legal-rational. The appearance and consolidation of modern states brought with them the tendency towards a legal-rational leadership style. However, even as states improve this strand, at the supra-national level, the legal-rational leadership style does not seem to prevail over the others. There are a number of examples of political leaders who take traditional, but still charismatic, leadership styles internationally (see Trump, Le Pen, or Salvini examples). The question then arises whether these leaderships and manifestations of power outside the states associated with them, often with direct impact on the current life of citizens, meet the normative conditions to be recognized as legitimate. These are the questions raised by the globalization of political power.

It is tempting to affirm that economic globalization, the proliferation of social risks, the acceleration of network interactions, the difficult obstacle to overcome, which is to know and understand the results of decision-making and the subsequent uncertainty for the future, are realities hard to assimilate by the rule of law that seems stunned by the vertigo of an evolution that struggles permanently to control more comprehensively (Correia & Videira, 2015).

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<sup>1</sup> In this regard, it is suggested to consult, on the subject of protection of trust in times of crisis, of the Judgment of the Constitutional Court n.º 509/2002, of 19 December, case n.º 768/02, reporter: Advisor Luís Nunes de Almeida; and on the declaration of unconstitutionality under consideration, of the Judgment of the Constitutional Court n.º 187/2013, of 22 April, case n.º 2/2013, 5/2013, 8/2013 and 11/2013, reporter: Advisor Carlos Fernandes Cadilha. It is also suggested the consultation, for presenting contributions very relevant to a more in-depth understanding of this theme, the work of Fonseca (2011).

In Portugal, recent examples of the globalization of political power, with implications not only legislative but above all practical, for community life, abound. They cover such mundane aspects as illegitimate bank transfers over the Internet (Correia & Jesus, 2016) or the protection of personal data (Correia & Jesus, 2014; Jesus & Correia, 2015). These are, however, ordinary examples (in the sense that they are not the result of extraordinary circumstances) of changes in the internal order resulting from external pressures or impositions. This was not the case with the Troika intervention in Portugal, which resulted from an extraordinary event (or sequel): the global economic and financial crisis, which began in 2007-2008.

It was this extraordinary external intervention in Portugal that, as mentioned in the introduction, points 7.1 to 7.18 of the MoU contained a series of measures aimed at the justice sector, the more delicate and relevant for the globalization of political power. The justice sector proves to be particularly critical and sensitive to this type of interference given the “constitutional consecration of the principles of independence and autonomy of the judiciary, impartiality and separation of powers and guaranteeing the rights and freedoms of citizens before the State” (Rodrigues et al., 2016).

The truth is that years of family and commercial indebtedness, low levels of savings, easy credit and low levels of economic growth, prosperity and productivity (along with technological changes as major social impacts that occurred during this period) characterizes Portuguese society at the end of the first decade of the new millennium. This state of affairs has led to high levels of non-compliance with financial obligations and, in turn, to large increases in the volume of lawsuits related to debt collection, including increases in the mass influx of civil enforcement actions in the judicial system (Correia & Videira, 2016).<sup>2</sup> As these authors point out, the organization of the judicial system was visibly complex and often even counterproductive and burdensome, and inadequately prepared to deal with this increased demand, particularly at the level of civil enforcement actions, thus required reform.

This profound reform of the Portuguese justice system was delayed not by ignorance of reality but by a lack of will (or even courage) to implement it. Now it was the globalization of political power, materialized in the intervention of the Troika in Portugal that provided the arguments of inevitability for a reform treated as a supranational imposition of external powers. In this context, the main actions negotiated with the Troika included (Portugal, 2011) the restructuring of the judicial map; the introduction of improvements in the role of enforcement agents and the enhancement of the supervisory and disciplinary capacities of the regulator; improvements in the system of alternative dispute resolution, improvements and speeding up of civil proceedings, including the elimination of useless formalities; or the creation of special revitalization processes with the aim of preventing bankruptcy and insolvency of viable companies

<sup>2</sup> See also, in this regard, European Commission for the Efficiency of Justice (2018) e Directorate-General for Justice Policy (2018).

(Law n.º 16/2012). Many of these measures were included in the new CCP, which entered into force in September 2013 (Law n.º 41/2013).

The implementation period of these reforms lasted approximately a year and six months and was preceded, contemporaneous and even succeeded by an intense and vociferous debate in which, it can be argued, the political speech on the reforms imposed by the necessary austerity, took the form of multifaceted populism. This will be dealt with in the following section.

### **Political Speech on Austerity as a Multifaceted Populism**

Moments of economic-financial austerity tend, historically, to be fertile grounds for the proliferation of populist speech. For the purposes of this text, populism can be defined as a political logic, a discursive and performative operation that divides society into clear antagonistic fields: the people versus the oligarchy (Laclau, 2005).

Zúquete (2018) defends populism as something beyond “being good” or “being bad”. This author understands the cleavage of populism / anti populism as the dominant political cleavage, nowadays. In these terms, anti-populism itself, which has been little studied in academic circles, can itself be seen as just another form of populism: presenting assumptions for which no evidence is displayed, normativity in which political science tries to tell people how to live (producing implicit or explicit normative conclusions), an exaggeration in the association between populism and radicalism, and even research motivated by partisan values and prejudices rather than for scientific reasons (Zúquete, 2018).

It may be argued that many of the populist critiques of the present western democratic system have a similar nature: the premise of inciting two opponents. On the one hand, the “real people”, decent, honest, hardworking, betrayed by technocracy and post-democracy, and on the other hand, the perpetrators: entrepreneurs, corporatist media, politicians, globalist elite and financial capitalism that is the enemy of the “real people”. By formulating the conjecture that the media are more than an effect of the populist momentum that is nowadays, it is possible to use the model of analysis of mediated political argument presented by Rodrigues (2018) to deepen this theme.

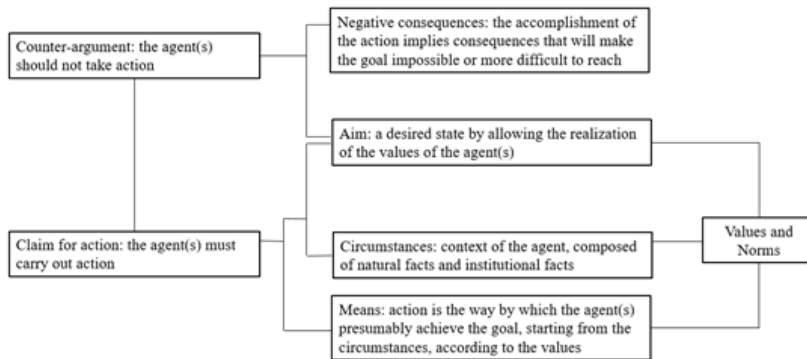


Figure 1 – General analysis model of political argumentation<sup>3</sup>

Rodrigues (2018) analyzes the political discourse in four crucial moments of external intervention in Portugal, two in 2011 (in January, when the adjustment program was only hypothetical; and in May, when it was formalized) and two in 2014 (in January, when the constitutional court’s declaration of unconstitutionality was debated in relation to some of the averages<sup>4</sup>; and in May, which coincides with the end of the program). Figures 2 to 5 illustrate the multifaceted arguments and counter-arguments, as well as the structure that underlies them, for each of the four moments analyzed by the author.

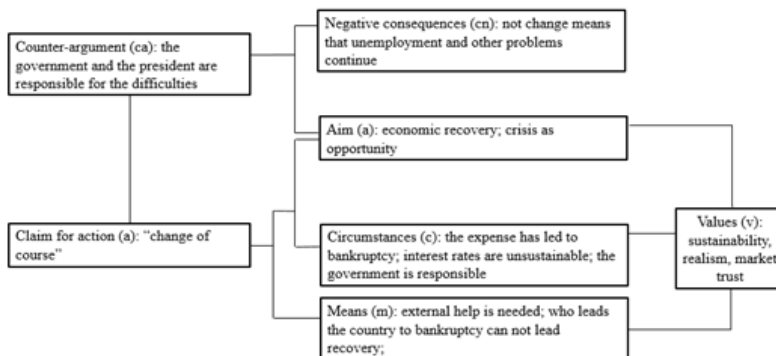


Figure 2 – General model of argumentation in favor of external intervention and main counter-arguments in blocks of prime time information (January of 2011)<sup>5</sup>

<sup>3</sup> Source: Rodrigues (2018), adapted and translated from Fairclough e Fairclough (2012)

<sup>4</sup> See again, Judgment of the Constitutional Court n. º 187/2013, of 22 April, case n. º 2/2013, 5/2013, 8/2013 and 11/2013, reporter: Advisor Carlos Fernandes Cadilha.

<sup>5</sup> Source: Rodrigues (2018), adapted and translated.

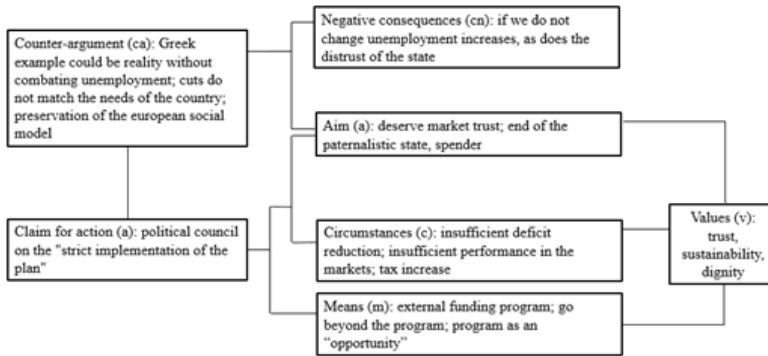


Figure 3 – General model of argumentation in favor of external intervention and main counter-arguments in blocks of prime time information (May of 2011)<sup>6</sup>

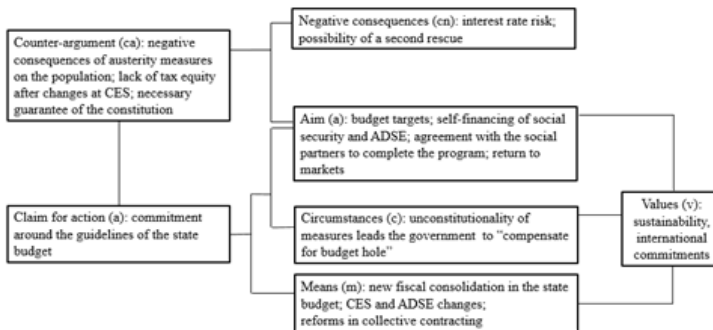


Figure 4 – General model of argumentation in favor of external intervention and main counter-arguments in blocks of prime time information (January of 2014)<sup>7</sup>

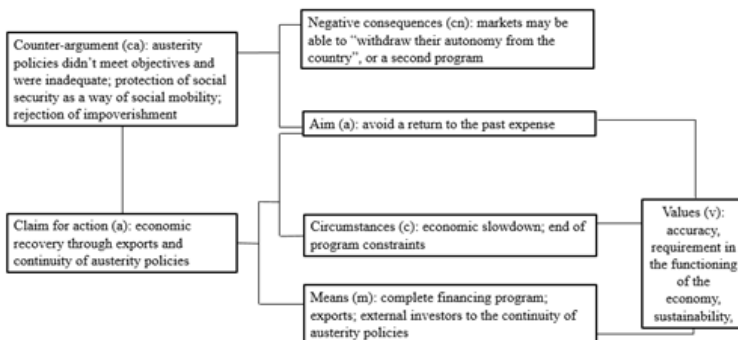


Figure 5 – General model of argumentation in favor of external intervention and main counter-arguments in blocks of prime time information (May of 2014)<sup>8</sup>

<sup>6</sup> Source: Source: Rodrigues (2018), adapted and translated.

<sup>7</sup> Source: Source: Rodrigues (2018), adapted and translated.

<sup>8</sup> Source: Source: Rodrigues (2018), adapted and translated.

It does not require particular artifice to frame these arguments and counter-arguments waged in the political speech on austerity as multifaceted populism: various forms of populist speech in action. If it's true that it's still a mitigated populism, because it's a political speech whose frame is still that of party institutions with a parliamentary seat and because it is a speech mediated by the traditional media, the truth is that it is possible to recognize, with relative facility, the great populist conceptualizations.

Consider: at the level of the arguments for austerity, it is possible to recognize the great traits that Zúquete (2018) attributes to right-wing populism: defense of the historical, traditional and cultural roots of a critically endangered way of life and the will to preserve and recover what was lost in the "crazy" race of progress. Similarly, at the level of the counter-arguments, one can recognize even more immediately the great traits that the same author attributes to the populism of the left: emphasis on rights, civic understandings, solidarity, redistribution, equality and fight against the neoliberal attack.

The politics considered as a mere project of reaching and maintaining power, as described by Maquiavel (1532) or Bobbio (1999), often divert the political speech from the facts that allow the effective resolution of the problems faced by the political communities. Nevertheless, some doctrine advocates the existence of a normative bias in the study of populism that tends to exaggerate the (positive or negative) impact of populism on democratic institutions (Aslandis, 2017). In addition to exposing the institutionally placid existence of this multifaceted populism, Rodrigues (2018) reveals a part of this normative bias observable in Portugal during the period of external intervention, recognizable by those who experienced it first hand and which Furedi (2018) systematized, in general: a normative bias often implied in the academic literature, explicit in the political commentary in the traditional media (Rodrigues, 2018), and strident in social networks (where the MoU and its advocates were treated by the left populists with the same hostility towards a fascist enemy and where the detractors of it were treated by right-wing populists as irresponsible and reckless, who did nothing but promise an unattainable land Eden.

This populist fervor for or against the austerity generated by the economic-financial adjustment, almost to brush against rage on both sides, is understood by some not as a danger to democracy but as a sign of commitment (King, 2016) that can lead to a healthy and necessary reorganization of a closed and irresponsible political system, pushing for the change of "wrong" and unpopular policies and bringing with it new perspectives and alternatives. The counterpoint to this idea, however, lies in the prospect that holistic changes can lead from a liberal, post-democratic regime (the current globalizing regime) to something much more oppressive and closed: dictatorial regimes. In addition, these favorable changes may not be lasting if the institutions at

the base of the system are not able to curb the imponderable revolutionary impetus. (Zúquete, 2018).

The following section illustrates, through a case study of the Portuguese justice system, the decisive role that institutions can play in refocusing the political debate on facts rather than momentary fires, however intense they may be.

### **The Increased Role of Institutions in Crisis**

In this section, and in view of the earlier argument that the Troika's intervention in Portugal was a reflection of the tendency towards a globalization of political power and of contributing to the intensification of populist political speeches, it seeks to be illustrated by the example of Directorate-General for Justice Policy, the decisive role that institutions play in moments of crisis and austerity.

An institution can be defined as an operative set of norms used to gauge who is eligible to make decisions in a given context, what actions are admitted or suffer limitations, what precepts of aggregation are used, what conducts should be pursued, what information should be provided or not and what remunerations will be granted to the entities (individual or collective) according to their actions (Ostrom, 1990)<sup>9</sup>.

As noted by Zúquete (2018), democracy itself entails conflicting interpretations of what its core values should be. On the one hand, pressures towards citizen empowerment, the populist side of the quest for a more participatory democracy, the denunciation of the post-democratic nature of representative regimes, the claim that a minority governs without the "people" and the vision of that populism is synonymous with hope (revitalization of the democratic pillar). On the other side, pressures in the normative and institutional sense, the anti-populist side of the focus on political pluralism, the rights of minorities, the checks and balances and the fear of erosion of the democratic pillar by populism.

The added role of institutions in times of crisis is therefore in the public scope where these maximization strategies revolve around the exchange of preferences for indulgence as part of a social negotiation, maintaining the status quo without which the existing institutional power can be destroyed (Levi, 1990).

According to the definition of Ostrom (1990) it is immediate to classify the DGJ as an institution of the Portuguese justice sector, with established organism and nuclear structure established by Decree-Law n.º 163/2012 and by Ordinance n.º 389/2012. In particular, it is important to highlight its mission and attributions (article 2.º of Decree-Law n.º 163/2012):

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<sup>9</sup> Additional information about the concept and definition of institution and its major theoretical currents can be found in Correia (2012).



1. The DGPI... is responsible for statistical information in the area of justice.
2. The DGPI pursues the following attributions: a) Support the planning, design, monitoring and evaluation of the policies, objectives and priorities of the Ministry of Justice (MJ)... and the definition and implementation of justice policies with the European Union, other governments and international organizations; b) Design, prepare, analyze and technically support the implementation of initiatives, legislative measures, policies and programs... and evaluate them... (pp. 3943-3947)

According to the competencies and attributions set out in the legislation, and away from the spotlight of the parliamentary debates, the commonplace of media debates and street protests against austerity measures, the DGPI, along with many other national institutions from all sectors of activity, was collecting statistical information; implementing public policies in articulation with the European Union, other governments and international organizations; designing, preparing, analyzing and providing technical support for the implementation of initiatives, legislative measures, policies and programs, and evaluating them.

The activity of evaluating the impact of the reforms resulting from supranational external intervention at a time of crisis is also of particular importance insofar as it is through this same evaluation that it is possible to illuminate, albeit imperfectly, which of the narratives or anti populist), is closer to reality.

This can be seen in graph 1 (attached)<sup>10</sup>. The monitoring of the results obtained at civil executions, which had already come from a period prior to external intervention (and includes the first period studied by Rodrigues (2018)), intensified during the intervention period (and includes the second and third periods studied by Rodrigues (2018)) and continued when the Troika left the country (fourth period studied by Rodrigues (2018)). As reported by authors such as Correia e Videira (2015, 2016) or Coutinho and Wemans (2015, 2017, 2018), the results were favorable, with positive indicators multiplying by a large part of the national territory (maps 1 to 3, attached). The advantages which can be derived from the existence of strong and effective institutions (which are not yet the complete example of the concept of hollow state) are not limited to situations in which the results are favorable. See graph 2 (attached) as an example of a monitoring situation in which the debate about favorability or not of results can be much more contentious. One can risk the assertion that, in times of crisis, acting institutions constitute a bastion of brakes and balances against multifaceted populism, in the sense established by the Constitution of the Portuguese Republic.

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<sup>10</sup> The purpose of graphic 1, as well as the rest of the contents of the Attachment to the present text, is not related to the presentation of some kind of data in particular but, rather, with illustration, using a case study of the Portuguese justice system, monitoring carried out and the evolution of the perspective of authorities and academics, over the course of time, on certain phenomena resulting from the Troika action in Portugal.

## Discussion and Conclusions

The aim of the present text was to link a trio of ideas with relevance and currentness to the scientific area of Political Science, complementing whenever possible the theoretical argument with examples of a scientific sub-area of Political Science, the Public Administration, in particular, the justice sector

The first of these ideas concerns the globalization of political power, a phenomenon that has grown in intensity during the first decades of the 21st century. It was initially argued that the intervention of Troika, composed of three supranational entities (European Commission, European Central Bank and International Monetary Fund), constituted a particularly visible instance of foreign policy intervention in the Portuguese context. The second idea expanded the analytical field of the first proposing the notion that the Troika intervention generated a kind of political speech around austerity that can be classified as populist. Given the arguments and counter-arguments that encompassed the entire political spectrum, it was also suggested that it was a pluralistic populist discourse or, in other words, a multifaceted populism (even though still institutionally framed in political parties and democratic institutions traditional).

The third idea emerged as a logical next step, having been illustrated, using a case study of the Directorate-General for Justice Policy, the role of institutions in times of crisis. The idea was expressed that these same institutions, when effective and active, still support the global tendency of the movement towards the hollow state (of the emptying of state powers), that can best fight against multifaceted populism with the use of objective data, to facts, against ignorance or misleading intentions.

It is left to others to examine in future studies the extent to which this argument is evidence of a successful globalized intervention of political power and to what extent it has adequately resisted the populist onslaughts. It is also suggested that these same studies investigate other types of measures specifically targeted in the MoU, allowing for a broader appreciation of the tangible results of the adjustment program applied in Portugal, a more substantiated determination of the historical consequences of this experience leading to (medium and long term) or transitoriness of the effects, good, hands or neutral, as a result.

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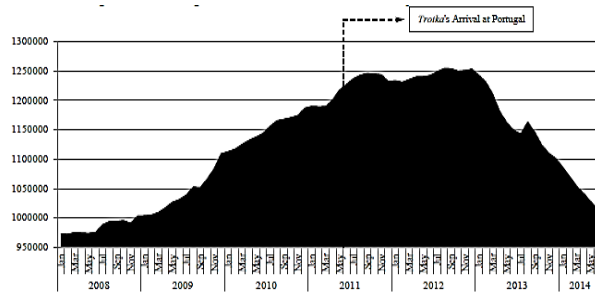
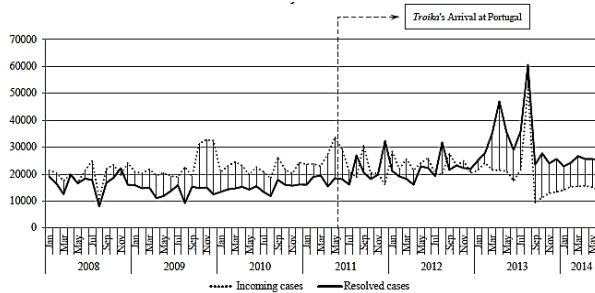
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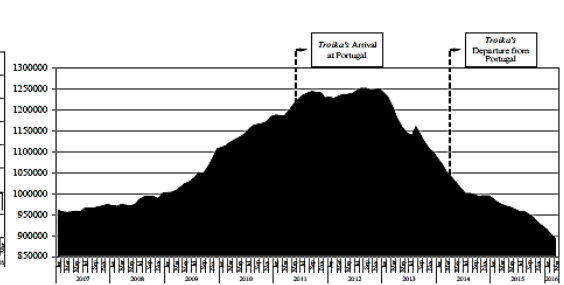
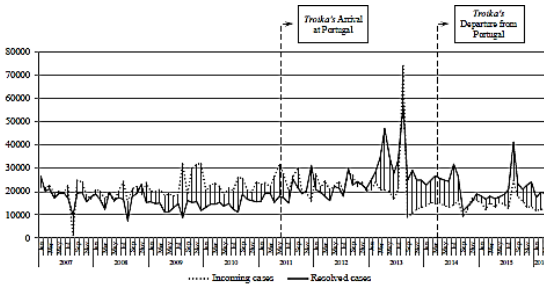
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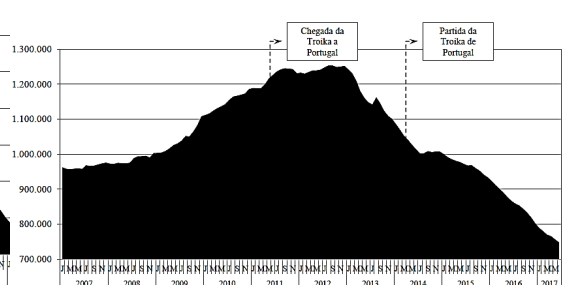
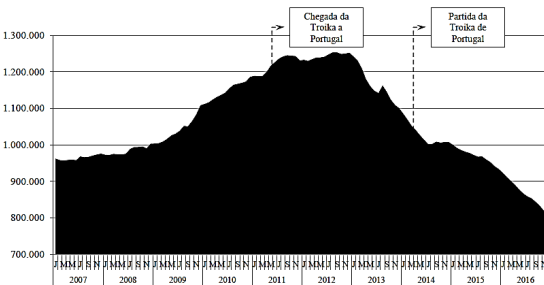
Appendix  
Graphics and Maps



Source: Correia e Videira (2015).

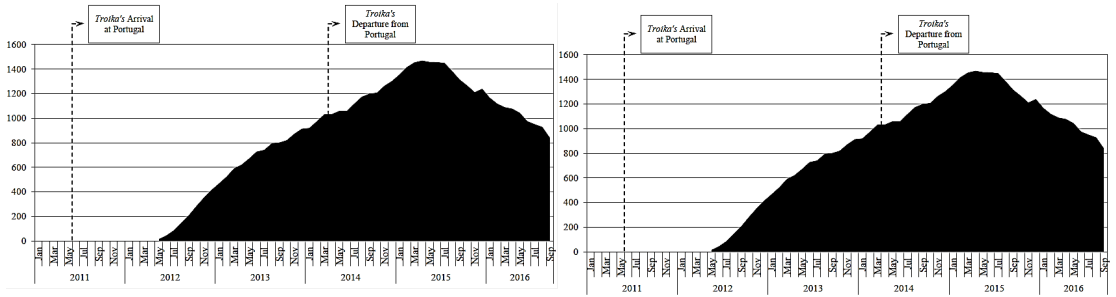


Source: Correia e Videira (2016).

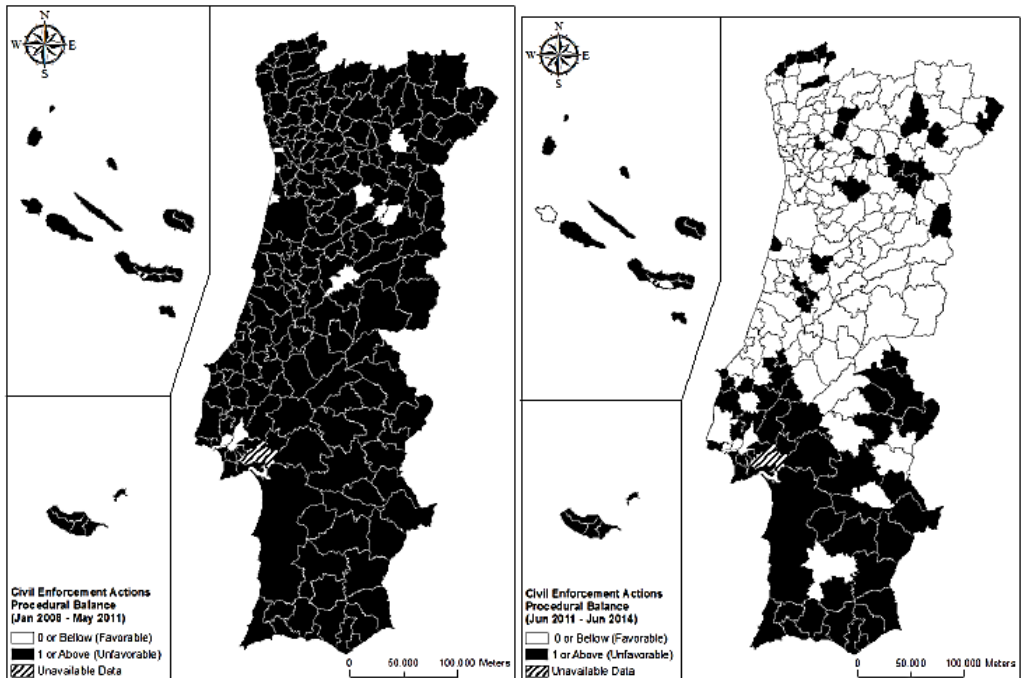


Source: Correia, Dias, Gonçalves, Novais, e Pereira (2018).

Graphic 1 – Continuous monitoring of demand (processes entered), supply (completed processes) and cumulative demand (pending cases) - Civil enforcement actions



Graphic 2 – Demand monitoring (processes entered), supply (completed processes) and cumulative demand (pending processes) - Special revitalization processes<sup>11</sup>

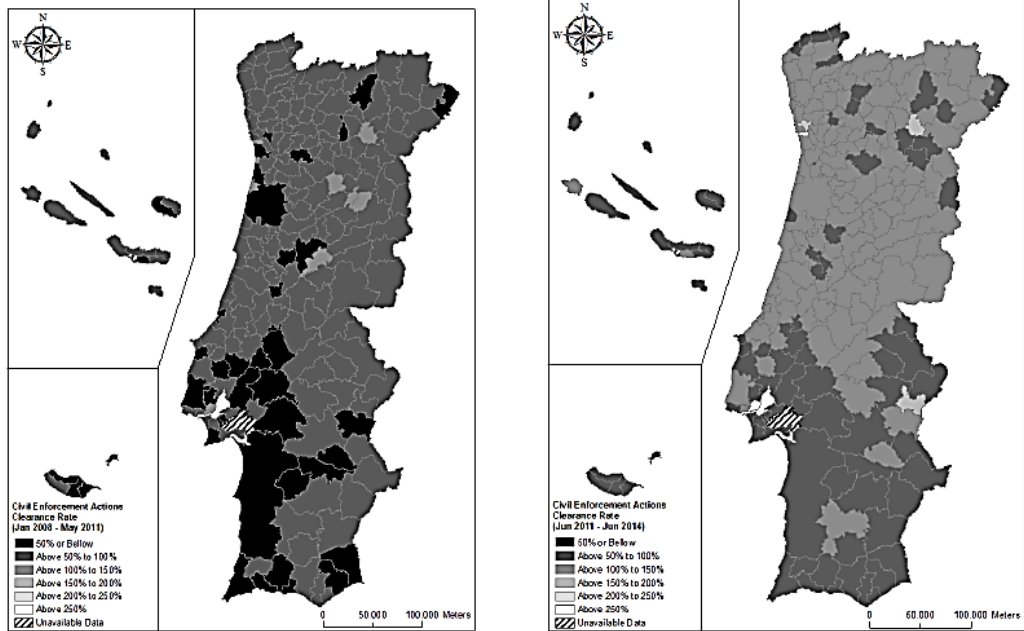


Map 1 – Balance of proceedings for civil enforcement actions – January 2008 to May 2011 (left); June 2011 to June 2014 (right)<sup>12</sup>

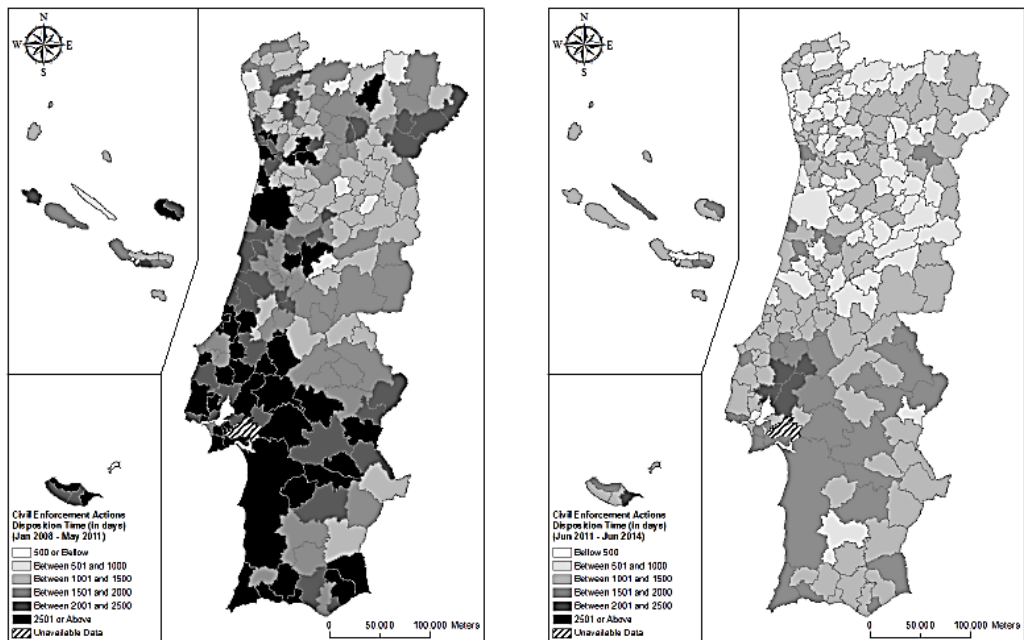
<sup>11</sup> Source: Correia, Videira, e Mendes (2018).

<sup>12</sup> Source: Correia e Videira (2015).





Map 2 – Rate of procedural resolution for civil enforcement actions – January 2008 to May 2011 (left); June 2011 to June 2014 (right)<sup>13</sup>



Map 3 – Disposition time for civil enforcement actions – January 2008 to May 2011 (left); June 2011 to June 2014 (right)<sup>14</sup>

<sup>13</sup> Source: Correia e Videira (2015).

<sup>14</sup> Source: Correia e Videira (2015).