



## *Troika's Portuguese Ministry of Justice Experiment: An Empirical Study on the Success Story of the Civil Enforcement Actions*

By Prof. Dr. Pedro Miguel Alves Ribeiro Correia and Susana Antas Videira<sup>1</sup>

### Abstract:

This article deals with the measures implemented by Portugal. It is based on objectives set out in the *MoU* signed between this country and the IMF/EC/ECB *Troika*, for the justice sector at the level of civil-enforcement actions. The work comprised conducting an empirical study on the quantitative advantages achieved by the implemented measures. Future work should extend the type of analysis presented, not only to other sectors of activity, but also to other countries intervened by *Troika*: Greece, Ireland, and the less-known and less-covered cases of Spain, Cyprus, Hungary, Latvia and Romania.

**Keywords:** *Troika*; Memorandum of Understanding (*MoU*); Portuguese Ministry of Justice; Civil Enforcement Actions; Public Policy Evaluation.

### 1. Introduction

As is recognized by all, Europe is going through a very harsh experience in its collective life.

The global economy has become increasingly integrated. The widespread opening of existing markets to new sources of goods and services has been made possible by more effective systems of transport, as well as by the unparalleled development of communication and information systems. This represents a sharp qualitative change in the nature of the economy. At the same time, we have become a world without boundaries, where the largest companies are truly global or even a-national.

Moreover, the indeclinable progress achieved in the computer and telecommunications fields – currently considered the engine or the soul of economic development – and problems related to the regulation of financial markets, enable the operators to intervene, continuously and in real time, almost anywhere on the globe, seemingly free from compliance with any effective normative or legal constraint.

A power of this dimension appears to have no parallel in history. Hence, it is tempting to affirm that economic globalization, the proliferation of social risks, the acceleration of network interactions, the obstacles in knowing and understanding the outcomes of decision-making and subsequent uncertainty as to the future are realities difficult to assimilate by a rule of law model that seems stunned by the vertigo of an evolution that it is struggling to more fully control.

The historical situation of our time may be characterized as “*an anguished exasperation, followed by a profound non-spiritualization*” (Montoro, 2000, p. 172). In this brand-new, multidimensional, international order, the State, the companies and the citizens face many challenges. As Friedrich Hayek persistently observed, the economic problem of society is mainly one of rapid adaptation to changes in the particular circumstances of time and space (Hayek, 1973, 1978, 1979). In the same vein, Chester Barnard also held that the main concern of organization was that of adaptation to changing circumstances (Barnard, 1971).

Portugal, in particular, went through a difficult phase in the past few years. The Memorandum of Understanding on Specific Economic Policy Conditionality, (*MoU*) (Portugal, 2011), signed on 17 May 2011 between Portugal and the European Commission, the European Central Bank and the International Monetary Fund, has envisaged, for the justice sector, a wide range of measures designed to:

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- a) Improve the functioning of the judicial system, which is essential for the proper and fair functioning of the economy, by ensuring effective and timely enforcement of contracts and competition rules;
  - b) Increase efficiency by restructuring the court system, adopting new court management models and reducing the slowness of the system by eliminating court case backlogs and by facilitating out-of-court settlement processes.

These measures, described in the *MoU*, were fully and timely complied with during the execution of the financial assistance program.

In this context, in order to reform the justice system and to make it more efficient and fairer, Portugal has assumed, as a priority, the challenge of reducing case backlogs resulting largely from problems related to the enforcement of judgments: the reinforcement and restructuring of the enforcement agents' roles; the enhancement of the powers of supervision of the entity responsible for the follow up; supervision of and disciplinary action against these professionals; reform of the insolvency and company rescue regime; restructuring the judicial map and the functioning of alternative dispute resolution means; the fight against the pendency of high value (over one million euros) tributary cases; and the establishment of a quicker civil case adjudication process designed to solve the controversial material issue without binding the judicial actors to formalisms that often prove to be useless.

Given this extensive list of commitments, the activity developed, either at legislative or at institutional level, to implement the measures and the objectives agreed upon with the international instances, was extremely intense, and significantly changed Portugal's judicial structures.

Now that the financial and economic assistance program has been completed, we can affirm that, apart from its darker side, the country's financial situation and the crisis have been surpassed. A window of an almost unique opportunity has been open to political decision-makers, citizens and companies. Economic, cultural and political elements meet in order to dare to reverse the structural problems of the society and, in particular, of the justice system.

This article neither seeks to provide an analytically closed text nor aims to focus on the customary socio-economic dimensions that may help to understand why Portugal required international economic and financial assistance. The article does provide a statistically sound and objective account of the *Troika's* Portuguese Ministry of Justice experiment. The authors anticipate that their analysis will provoke empirical and theoretical research and debate on these subjects, both in the academic and the judicial systems communities.

## **2. Framework and Objectives**

The reform of the enforcement action, developed in recent years, resulted in a complex organizational system marked by a lengthy processing circuit that made enforcement service burdensome and counterproductive. The objective was to significantly reduce the existing civil backlog by streamlining that process to enable the completion of enforcement cases within a more reasonable time frame, thus responding more timely to the social and economic expectations of affected litigants.

Portuguese society has been plagued by over-indebtedness at both the family and the commercial levels, resulting in painful consequences and low saving levels. Linked with easy-terms credit and low levels of national economic prosperity and productivity essential to generate real wealth, these issues have collectively conspired to mortgage the country's financial future. At the time the *MoU* was signed, Portugal was suffering from high levels of defaults in meeting financial obligations on the parts both of companies and individuals, generating significant increases in debt collection and the litigation associated with it.

Enormous increases in the quantity of civil enforcement actions compared with total pending civil cases at the courts (Directorate General for Justice Policy, 2013b, 2013c, 2014a, 2014b, 2014c, 2014d), prompted in-depth reforms in debt recovery process. One reform entailed disposing of enforcement actions considered unfeasible, leaving the courts free to focus on resolvable enforcement actions. A quick and effective method was established to attach or freeze bank accounts by electronic means, safeguarding all the interests and rights of the debtors but providing the quick satisfaction of the creditors on terms that, up to then, had never been attained.

Indeed, with the new Civil Procedure Code (CPC), that has entered into force on September 2013 (Portugal, 2013b), the system of debt-recovery, a crucial component of a competitive judicial system, was substantially modernized and streamlined. From among all the measures designed to simplify and deformalize debt collection adopted by the law in force, the inclusion of bank accounts in the electronic regime is perhaps the most significant change, even though it has long been planned but never implemented due to countless technical difficulties. Articles 749(6) and 780 of CPC, (Portugal, 2013b), requires the Bank of Portugal to provide the enforcement agents with information on bank accounts opened in the name of a certain debtor. These articles also granted enforcement agents the authority to electronically block designated debtors in court cases from depleting existing bank balances in their accounts once certain conditions are observed and within the limits required to protect their legitimate interests. Use of this authority has simplified and accelerated recovery of debts due, and, at the same time reduced administrative overhead and other costs.

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Another area, where the simplification of the civil procedure was most evident was the way of lodging an enforcement action and recognizing the uselessness of bringing a new enforcement action when one already had been initiated and been declared in a court ruling. In these cases, it is no longer necessary to bring an action to turn effective what the court has already declared. This mechanism, now regulated by article 85 of the new CPC, (Portugal, 2013b), is the link many thought was missing between a declaration of a right and its enforcement; now the amended law prohibits it. In the domestic legal order, we now have a clear distinction between the summary and the ordinary form of enforcements for payment of fixed amounts, provided for in article 550 of the new CPP, (Portugal, 2013b). This ends the apparent simplification of the form of the enforcement action that was nothing more than just that: a simplifying appearance. The previous regime propagated that there was only one form of the enforcement action, the processing of which varied according to various circumstances. The law in force clearly marks the steps that have to be taken in each of the aforesaid procedural forms.

Another formalism countered by the new CPC is the existence, in the legal order, of enforcement actions that are still alive but should no longer be, either because (i) they have already produced the desired effect and the creditors are regularly receiving their due payment, or (ii) they are not deemed justifiable as the debtors do not have assets able to satisfy the creditors. Thus, the legislator took care to clarify that be it due to the inexistence of the debtor's assets or due to the fact that the attachment of periodical incomes is ongoing. The new Civil Procedure Code, while maintaining the causes for the extinction provided for in the previous regime, has added three new situations that enable precisely the reduction of the backlog in the civil courts, by tackling those situations that increased the pendency, in an unjustifiable manner. Article 849 of the new Civil Procedure Code (Portugal, 2013b), adds to the causes of extinction the following situations:

- a) In the attachment phase, if no assets likely to be attached are found within three months of the notification stating the beginning of the diligences for the attachment and, if neither the creditor nor the debtor indicate assets able to be attached within 10 days, the enforcement action terminates;
- b) As regards the attachment of rents, allowances, incomes or salaries, once the period for the objection ceases and has neither been decided upon nor declared inadmissible and if no assets likely to be attached are identified, the enforcement agent, after ensuring that the payments related to his/her remuneration and expenses are made, adjudicates the amounts falling due and notifies the paying entity to convey them directly to the creditor, thus terminating the enforcement;
- c) In a competition of creditors, whenever there is a plurality of enforcements over the same assets, the full suspension of the second enforcement determines the extinction of the enforcement, without prejudice to the fact that the creditor may require the renewal of proceedings as soon as he/she designates concrete assets to be attached.

The purpose of the procedural simplification did not, however, slacken the legislator's concerns with the safeguard of the most legitimate rights of the debtors; this reform has also to strengthen the guarantees due the debtors. To illustrate, it should be noted that one of the most relevant measures taken at the enforcement action level as regards the reinforcement of the debtors' rights, was the enforcement loss of strength in private documents, thus ensuring the guarantee against unjustified enforcements, so often grounded in writings of a very questionable understanding and validity. The non-feasibility of private documents conveys a greater legal safeguard to enforcement actions, avoiding objections to be raised whenever private documents and their underlying relation must be discussed. For the sake of the legal certainty and safety, the private documents that imply the constitution or the recognition of an obligation must be formally recorded or authenticated by a notary or by other competent entities or professionals, so as to ensure their validity as enforcement titles.

Moreover, under the new Civil Procedure Code, private persons may now resort to court officials to collect non-professional debts up to ten thousand euros. If they are workers, such possibility is extended to the enforcements designed to recover uncollectable labor payments not to exceed thirty thousand euros.

In line with the simplification and procedural de-formalization concerns, the legislator has not forgotten, as is indeed necessary, to enhance the mechanisms of access to justice.

An operational working group was set up in 2011. In addition to the competent services within the Ministry of Justice, several outside entities with responsibilities in the enforcement action scope were involved, including the High Council of the Judicature, the Chamber of Solicitors, the Specialty College of the Enforcement Agents, the Commission for the Efficiency of Enforcements, and the Commission for the Follow up of Court Assistants (CAAJ) tasked with following up on enforcements in Portugal and assessing proceedings that could be adopted in a concerted manner. The purpose was to allow the classification of all existing enforcement actions, including those considered unnecessary, either because (i) the debtor has no assets to repay creditors or (ii) the payments due to the creditor are being made. This collective effort enabled consensus on many measures that were adopted, resulting in recent quarters in a decrease in the number of enforcement actions that have streamlined civil case processing in the Portuguese judicial system<sup>2</sup>.

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<sup>2</sup> This group has furthered an extensive set of operational, administrative, technical and legislative measures, that go from the development of new functionalities in the computer support systems to the courts' and enforcement agents' activity, the promotion of new work methodologies and reorganization of human resources, training courses for enforcement agents and their follow up

After a lengthy era spanning at least two decades of steady increases in the number of pending enforcement cases, statistical data for 2013 reported a favorable decrease in the number of pending enforcement cases.

Some readers have sought to develop a theoretical perspective to frame the content of this article. The literature on the subject is significant and growing. The most persuasive are (i) the new public management perspective (see, for instance, Lane 2000; Gomes, 2007; Pekkanen, 2011; Frederickson *et al.*, 2012), and (ii) the theories of judicial governance (see, for instance, Ng, 2011; Frederickson *et al.*, 2012). Other prospective academic approaches include (i) a macro-model approach of the judicial system (see, for instance, Tin, 1999; Bell, 2006; Smith, 2008; Ambach and Rackwitz, 2013), (ii) concerns for power separation and the erosion of judicial legitimacy (see, for instance, Stephenson, 2004; Langbroek, 2008), (iii) demand pressure and human resources productivity (see, for instance, Ng *et al.*, 2008; Walsh, 2008), or (iv) the permanent notion of crisis in judicial systems (see, for instance, Campbell, 2013). However, the authors again stress that the objectives of this article consist in making available and circulating a statistically sound, theoretically neutral account of the *Troika's* Portuguese Ministry of Justice experiment to stimulate subsequent empirical work and theoretical debate on these topics. Readers are encouraged to resist any prior theoretical framework temptation until they have completed this article.

### 3. Methodology

Empirically, this study examines civil enforcement actions in Portugal's first-instance courts from two perspectives. The first, analyses geographical information and is based on data gathered from 217 first-instance county courts (the most atomized geographical units of judicial territorial jurisdiction in the Portuguese territory)<sup>3</sup>. The second perspective analyses the behavioral temporal evolution of this case type and is based on data from a 78-month sample occurring from January 2008 to June 2014. Forty-one of these 78 months precede *Troika's* arrival in Portugal (January 2008 to May 2011); the remaining 37 months postdate *Troika* arrival (June 2011 to June 2014). The raw data used comprises the numbers of new, completed<sup>4</sup> and pending<sup>5</sup> enforcement actions, in Portugal. It was released to the public by the responsible government agency, the Directorate General for Justice Policy (available at <http://www.siej.dgpi.mj.pt>)<sup>7</sup>. In addition to these three original variables (new, completed and pending enforcement actions in the first instance courts in Portugal), three other compounded indicators lie at the core of this analysis: procedural balance<sup>8</sup>, clearance rate<sup>9</sup> and disposition time<sup>10</sup>.

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and the conception of a set of specific legislative measures that focused on identified problems that the system needed in order to release the courts from unviable cases. From among these specific legislative measures, it should be noted the Decree-Law 4/2013, of 11 January (Portugal, 2013a), that has approved a set of provisional measures to fight the backlog pendency. These provisional and urgent legislative solutions were absorbed into the new Civil Procedure Code and included such measures as: termination of the proceedings for lack of attachable assets in enforcement actions initiated before September 15, 2003 (old enforcement actions); termination of the proceedings for lack of procedural impulse from creditors and debtors; and termination of the proceedings for lack of payment due to enforcement agents. At the same time, as a result of this group's work, and together with the High Council of the Judicature, it was possible the constitution in Lisbon, Porto, Vila Nova de Gaia, Maia and Oeiras, of specialized teams to streamline debts up to the value of 10,000 €, to fight against overdue civil enforcement actions, to regularize the pendency and streamline the processing of the cases. These specialized teams allowed for a significant amount of work to be done, without requiring permanent allocation of resources, necessarily scarce in an economically and financially intervened country.

<sup>3</sup> The counties of Palmela (in the mainland) and of Lagoa (in the Autonomous Region of Azores) were set up (by law) but never became operational because their cases are processed in courts located in neighbouring counties. Therefore, there is no geo-referenced data for these counties.

<sup>4</sup> According to the Directorate General for Justice Policy, a completed case is "a case upon which a final decision has been given, either in the form of a judgment, sentence or order in the relevant instance, irrespective of the *res judicata* decision". See, for instance, the footnotes on completed cases and the practical applications of this concept in some documents elaborated by the Directorate General for Justice Policy (2011, 2012, 2013a).

<sup>5</sup> According to the Directorate General for Justice Policy, pending cases are "[...] cases that, having entered the courts, have not been completed, that is, have not had a final decision, either in the form of a judgment, sentence or order in the relevant instance, irrespective of the *res judicata* decision. Pending cases are thus cases that are waiting for certain actions or diligences to be carried out either by the court, by the parties or by any other entity. Some cases may even be waiting for certain facts to occur or for a time limit to run its course. For instance, a suspended case is a pending case regardless of the cause of such suspension". It is also important to note that "a pending case is not necessarily a delayed case, an example of which, are the cases that are being processed within the legal time limits". See, for instance, the footnotes on pending cases and the practical applications of this concept in some documents elaborated by the Directorate General for Justice Policy (2013b, 2013c, 2014a, 2014b, 2014c, 2014d).

<sup>6</sup> Cases that were transferred, attached, incorporated or joined to other procedures and those sent to another entity were withdrawn from the data pool, as they do not correspond to new cases in the courts but simply to internal transfers within the judicial system; they do not reflect meaningful demand or supply data regarding the system.

<sup>7</sup> Cases that were transferred, attached, incorporated or joined to other procedures and those sent to another entity were withdrawn from the data pool, as they do not correspond to new cases in the courts but simply to internal transfers within the judicial system; they do not reflect meaningful demand or supply data regarding the system.

<sup>8</sup> The negative values correspond to a favourable procedural balance (more completed cases than new ones and therefore a decrease in the pendency). The positive values correspond to an unfavourable procedural balance (more new cases than completed ones and therefore an increase in the pendency).

<sup>9</sup> The values higher than 100% correspond to a favourable clearance rate (more completed cases than new ones and therefore a decrease in the pendency). Values lower than 100% correspond to an unfavourable clearance rate (more new cases than

The calculation formula of these indicators, for a certain period  $t$ , is as follows<sup>11</sup>.

(1)  $Procedural\ balance_t = Number\ of\ new\ cases_t - Number\ of\ completed\ cases_t$

(2)  $Clearance\ rate_t = \frac{Number\ of\ completed\ cases_t}{Number\ of\ new\ cases_t}$

(3)  $Disposition\ time_t = \frac{Number\ of\ pending\ cases_t}{Number\ of\ completed\ cases_t} \times Number\ of\ days_t$

The test Shapiro-Wilk (Shapiro and Wilk, 1965) was used to try out the experience of normality in the distribution of monthly data in each category (pre-*Troika* and post-*Troika* group of months)<sup>12</sup>. The absence of normality invalidates the application of the main parametric tests comparing two sets of data, thus it was necessary to apply the Mann-Whitney test (Mann and Whitney, 1947) to determine whether these two sets of data (i) came from the same population (null hypothesis) or (ii) originated from distinct populations (alternative hypothesis)<sup>13</sup>. In any of these statistical tests, the level of significance used was 0.05 (5.00%).

#### 4. Results

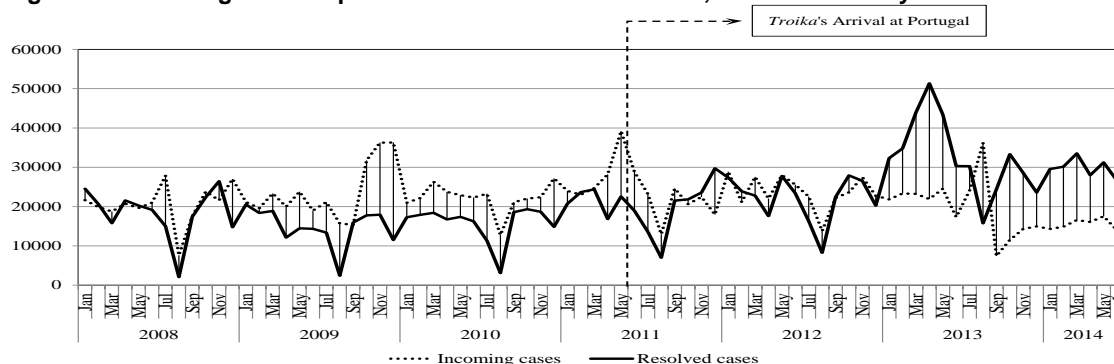
The analysis presented in this section is divided into two parts. The first is devoted to the presentation of descriptive statistics that constitute a consistent and growing body of evidence of positive results in terms of indicators relating to civil enforcement actions in the period after *Troika's* arrival to Portuguese territory. The second part, in turn, uses a set of mathematical tests, so that it is possible to obtain a confirmation free and unbiased by statistical evidence to that effect.

##### 4.1. An Accumulation of Evidences – Descriptive Statistics

Figure 1 shows the evolution of the number of incoming and completed civil enforcement actions in the courts, in Portugal, between January 2008 and June 2014.

Before initiating a more careful reading of the data, it is essential to note the existence of a strong seasonality. This seasonality is noted at the level of the incoming civil enforcement actions but even more so at the level of the resolved ones, with particular emphasis on the month of August, the default judicial vacation period.

**Figure 1 – Incoming and completed civil enforcement actions, between January 2008 and June 2014**



Source: prepared by the authors.

To mitigate this phenomenon to obtain the clearest reading of the underlying trends, the authors adjusted the data series that assumed the seasonal factor, the co-existence of trends in the data, and alterations in the value of the variance over time<sup>14</sup>. The evolution of the number of incoming and completed civil enforcement actions, adjusted according to the seasonality, between January 2008 and June 2014, is plotted in figure 2.

completed ones and therefore an increase in the pendency). This indicator has the advantage, in relation to the procedural balance indicator, of being a measure based on relative rather than absolute values, enabling better comparisons for extended periods of time even if the demand/supply ratios of the judicial system drift significantly.

<sup>10</sup> The lower the value, the more favourable it is.

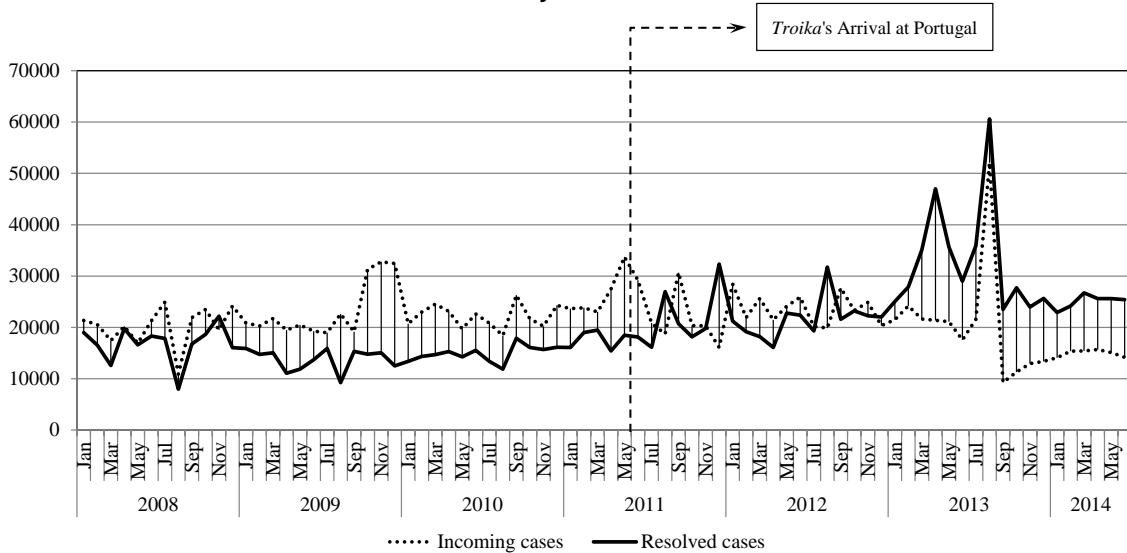
<sup>11</sup> View, for instance, the reports on the evaluation of the European judicial systems of the European Commission – CEPEJ (European Commission for the Efficiency of Justice, 2005, 2006, 2008, 2010, 2012, 2014).

<sup>12</sup> The Shapiro-Wilk test was chosen given that, in each category, the number of observations did not exceed 50.

<sup>13</sup> The output of the Mann-Whitney test may also be interpreted as being a test to the existence or not of differences in the medians of the two sets of data.

<sup>14</sup> The adjustment process comprises three steps: removal of seasonality, removal on any linear data trend, and a variance-stabilizing transformation. The process starts by taking logarithms of each of the original data series (incoming cases and resolved cases). Subsequently a regression analysis is used to identify the linear trend on the logged data. The residuals are then calculated (differences between the logged series and the logged trend). The seasonal factors are calculated next (averages of the residuals for each month). The seasonal factors are subtracted from the original logged series in order to attain the logged seasonally

**Figure 2 – Incoming and completed civil enforcement actions, adjusted according to the seasonality, between January 2008 and June 2014**

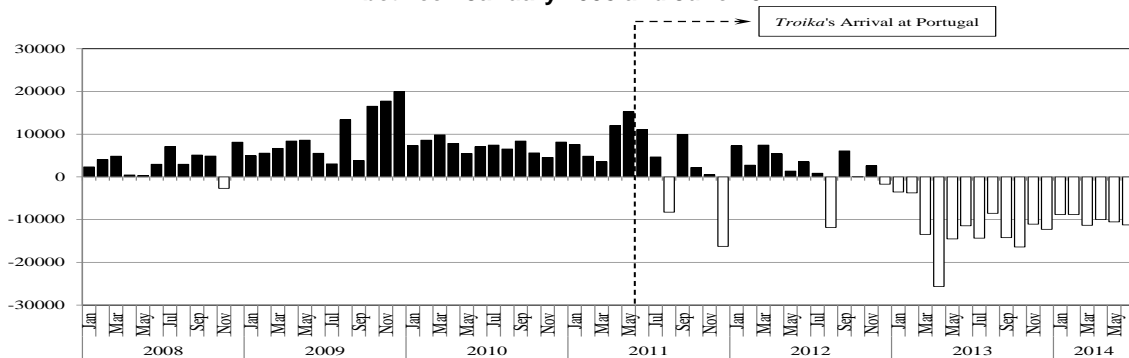


Source: prepared by the authors.

All the composite indicators presented below (procedural balance, clearance rate and disposition time) are calculated based on the values of incoming and completed cases adjusted according to the seasonality and to the values relating to pending cases<sup>15</sup>.

Figure 3 plots the procedural balance, adjusted according to seasonality, for the period in question. Immediately evident is a change in trends since June 2011, a change especially marked since the beginning of 2013, about a year and a half after the start of the adjustment program. In effect, of the 78 months considered in the analysis, 23 showed favorable procedural balances – months in which the number of completed cases was higher than the number of incoming cases and resulted in a decrease in the pendency equivalent to that same balance). Of these 23 months, 22 (or 95.7%) were recorded in the period after the arrival of the *Troika* to Portugal (May 2011).

**Figure 3 – Procedural balance for the civil enforcement actions, adjusted according to seasonality, between January 2008 and June 2014**



Source: prepared by the authors.

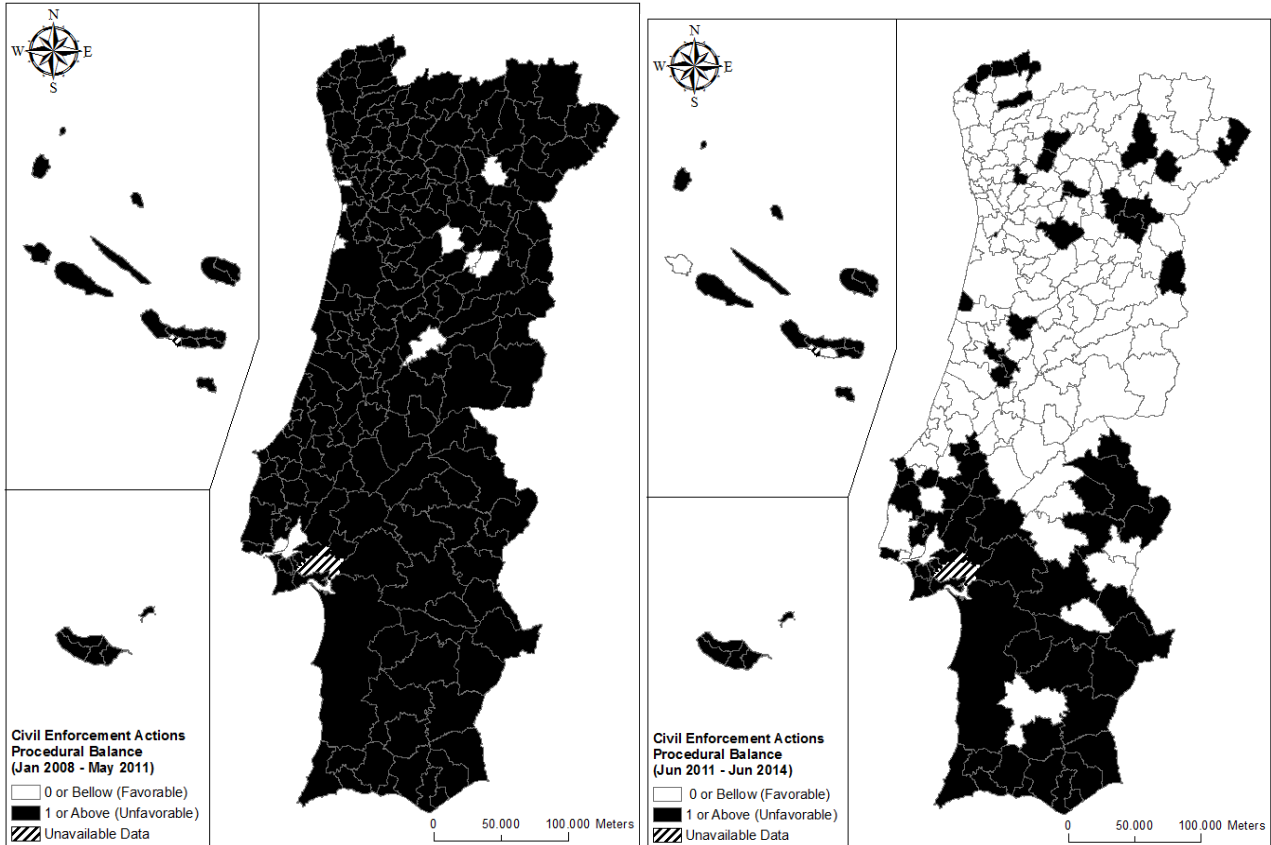
Figure 4 compares the geographical distribution, by district, of the procedural balance for the civil enforcement actions in Portugal's courts of first instance for the periods before and after the arrival of *Troika*.

Considering that in both maps shown in figure 4, the same scale and the same symbols were used in the representation, the differences observed are substantial. Between early 2008 and the end of May 2011, only eight of the 217 districts had favorable procedural balances (below 0), corresponding to a percentage of 3.7% of the total. By contrast, between the beginning of June 2011 and the end of June 2014, 131 of these 217 districts had achieved a favorable procedural balance (below 0), corresponding to a percentage of 60.4% of the total, amounting to an increase of 56.7 percentage points compared to the previously recorded value.

adjusted series. Finally, the original scales are recovered by taking the logged seasonally adjusted series and use them as powers of 10.

<sup>15</sup> Contrary to what occurs with the incoming and completed civil enforcement actions, the time evolution of the number of pending enforcement actions does not suffer the effects of seasonality and it was not necessary to adjust them. Data on pending cases will be presented later in this article.

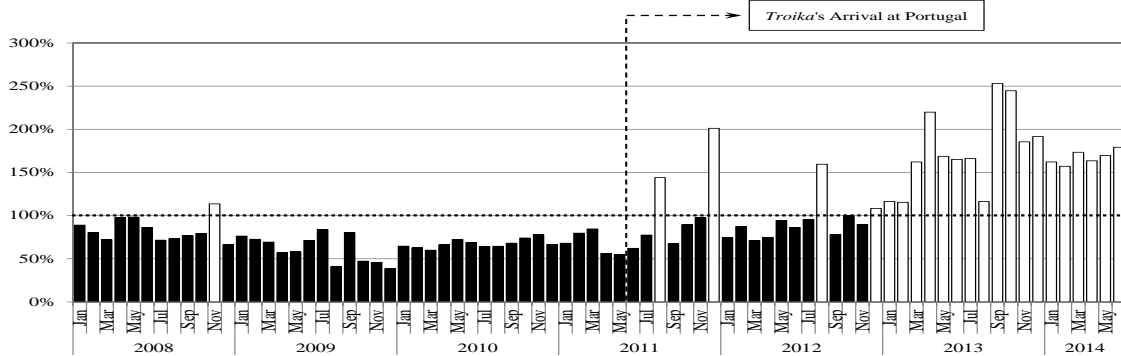
**Figure 4 – Civil enforcement actions procedural balance – Jan 2008-May 2011 (left) and Jun 2011-Jun 2014 (right)**



Source: prepared by the authors.

In turn, figure 5 shows the clearance rate, adjusted for seasonality, in the period under review. Similarly to the verified in the procedural balance, a change is clearly evident in the trend, approximately from June 2011, even more emphatic since the beginning of 2013<sup>16</sup>, about a year and a half after the start of the adjustment program. In fact, of the 78 months considered in the analysis, 23 reflect a favorable clearance rate (i.e., above 100%, resulting in a decrease in pendency). Of these 23 months, 22 (or 95.7%) were recorded in the period after the arrival of the *Troika*.

**Figure 5 – Civil enforcement actions clearance rate, adjusted according to the seasonality, January 2008 to June 2014**



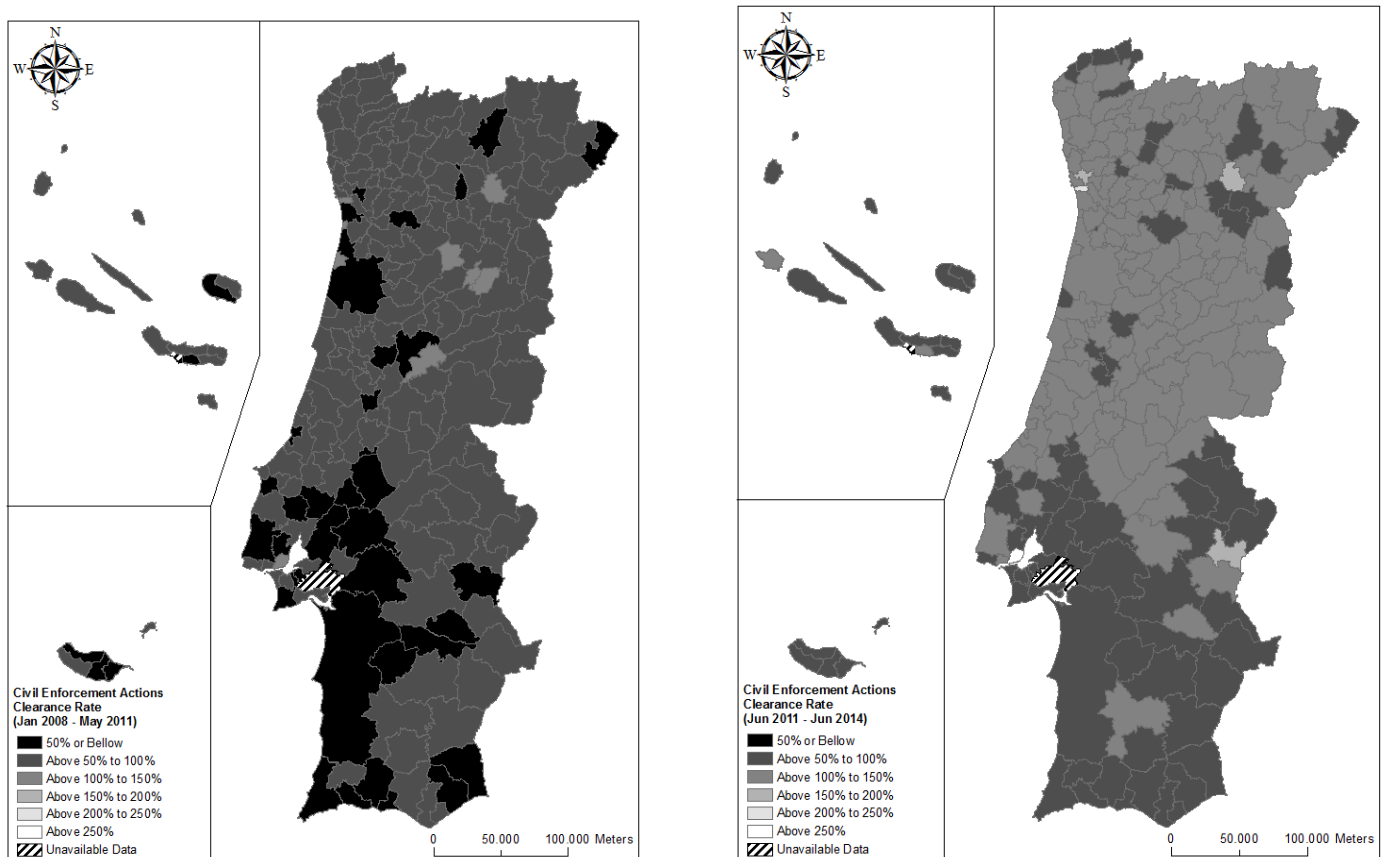
Source: prepared by the authors.

The comparative geographical distribution, by district, of the clearance rate for the periods before and after the arrival of the *Troika* to Portugal, is shown in figure 6.

Considering that in both maps shown in figure 6 (as in figure 4) where the same scale and the same symbols are used in the representation, the differences observed are substantial. Between early 2008 and the end of May 2011, only eight of the 217 districts had favorable clearance rates (above 100%), corresponding to a percentage of 3.7% of the total. Contrary to this reality, between the beginning of June 2011 and the end of June 2014, 131 of these 217 districts had a favorable clearance rate (above 100%), corresponding to a percentage of 60.4% of the total, amounting to an increase of 56.7 percentage points compared to the previously recorded value.

<sup>16</sup> Even including four months with clearance rate values higher than 200%, that is, the number of completed cases is more than twice the number of incoming cases.

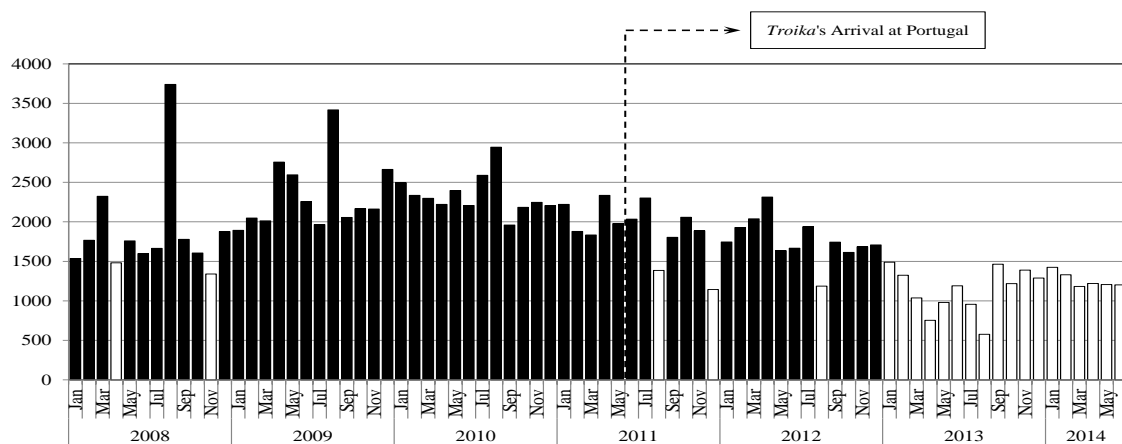
Figure 6 – Civil enforcement actions clearance rate – Jan 2008-May 2011 (left) and Jun 2011-Jun 2014 (right)



Source: prepared by the authors.

Figure 7, in turn, shows the disposition time, adjusted according to the seasonality, in the period under review. It is also clear, similarly to the verified regarding the previously shown indicators, that there is a change in the trend, approximately from June 2011, which also becomes especially marked since the beginning of 2013, about a year and a half after the start of the adjustment program. In fact, of the 78 months considered in the analysis 23 showed a disposition time under 1,500 days. Of these 23 months, 21 (or 91.3%) were recorded in the period after the arrival of the *Troika*.

Figure 7 – Civil enforcement actions disposition time, adjusted according to the seasonality, January 2008 to June 2014



Source: prepared by the authors.

The comparative geographical distribution, by district, of the disposition time for the period before and after the arrival of *Troika* to Portugal, is shown in Figure 8.

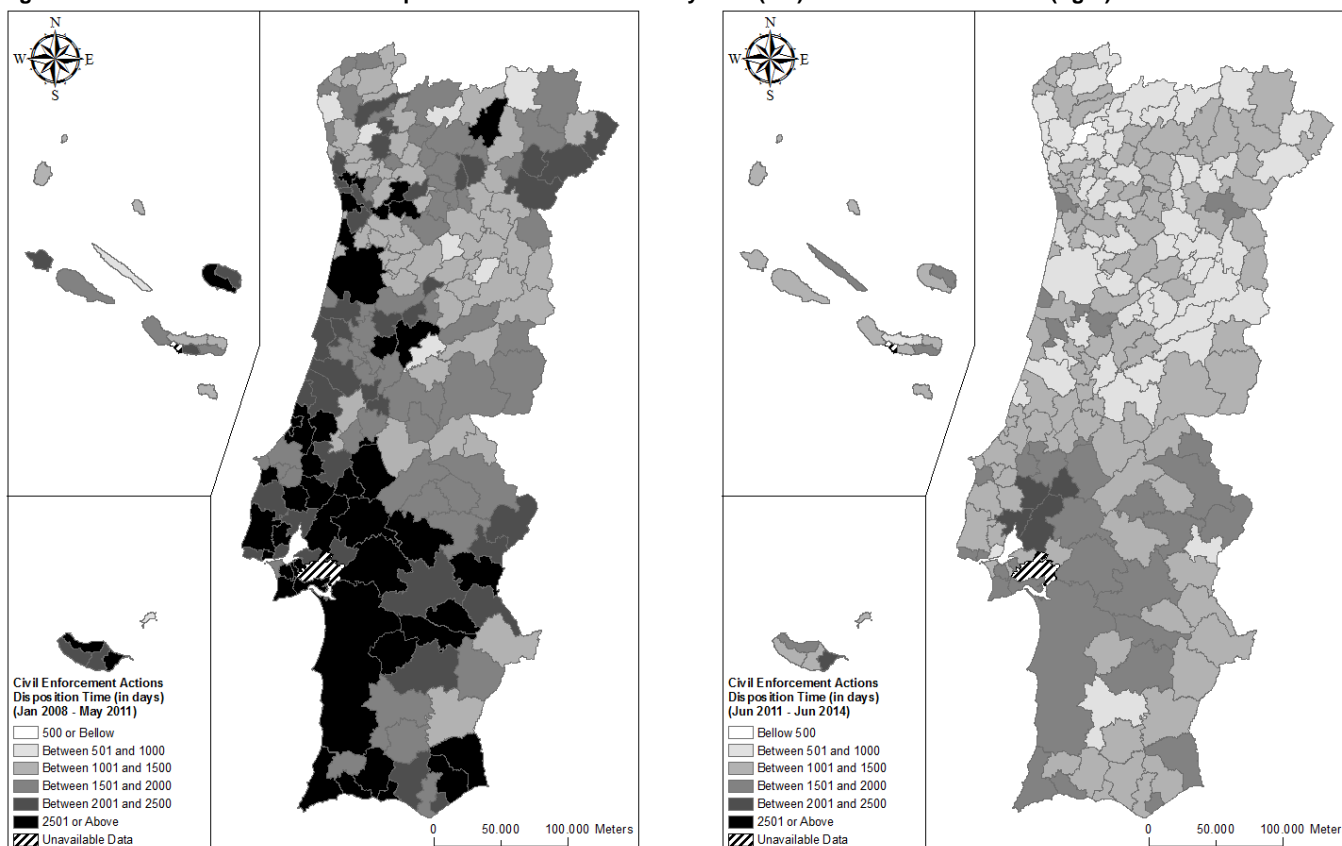
Considering, once more, that in both maps shown in figure 8 (as in figures 4 and 6), the same scale and the same symbols were used in the representation, the differences observed are substantial. Between early 2008 and the end of May 2011, only 68 of the 217 districts had a disposition time of 1,500 days or more, corresponding to a percentage of



31.3% of the total. Contrary to this reality, between the beginning of June 2011 and the end of June 2014, 175 of these 217 districts had a disposition time of 1,500 days or more, corresponding to a percentage of 80.6% of the total,

amounting to an increase of 49.3 percentage points compared to the previously recorded value, suggesting celerity gains, in this types of cases.

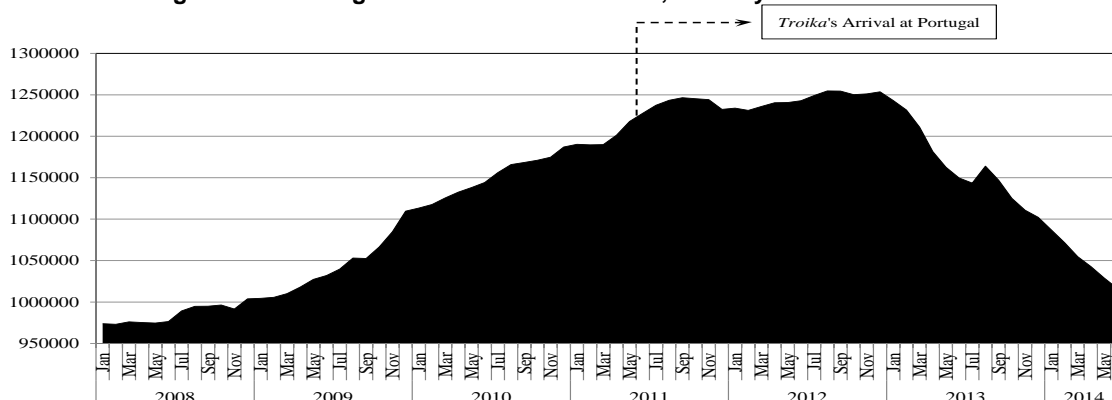
**Figure 8 – Civil enforcement actions disposition time – Jan 2008-May 2011 (left) and Jun 2011-Jun 2014 (right)**



Source: prepared by the authors.

All these results converge, as shown in figure 9, contributing first to stabilization enforcement actions in Portugal (from the beginning of 2013). A careful review of figure 9 suggests that it is not a mere coincidence; Portugal's compliance with the objectives set in the *MoU* after the arrival of the *Troika* and the beginning of the respective adjustment program, in May 2011 achieved favorable results that intensified after an 18-month period of work and system stabilization. Taking as a reference point the maximum reached in 2012, by June 2014 we had already achieved a decrease of more than 210,000 cases from the pending backlog. The measures, despite having taken some time, have been effective.

**Figure 9 – Pending civil enforcement actions, January 2008 to June 2014**



Source: prepared by the authors.

We next explore the validity of the assertion that the values of these indicators, for the periods before and after commencement of Portugal's judicial system's effort to achieve the objectives set out in the 2011 *MoU*, have different statistical properties; such differences cannot be attributed merely to the usual variability of the phenomena under study.

## 5. Beyond Reasonable Doubt – Statistical Evidence

Although for any of the six main variables in question (incoming cases adjusted for seasonality, completed cases adjusted for seasonality; pending cases; procedural balance adjusted for seasonality; clearance rates adjusted for seasonality and disposition time adjusted for seasonality) the data revealed a normal distribution<sup>17</sup> simultaneously for all 41 months before the arrival of *Troika* to Portugal (January 2008 to May 2011) and for the 37 months after the arrival of *Troika* to Portugal (June 2011 to June 2014), the use of the comparison test of two means (Gosset, 1908) has not proven adequate<sup>18</sup>.

Therefore, and as mentioned in the point relating to methodology, it was decided to apply the Mann and Whitney test (1947) to determine whether these two sets of data come from the same population (null hypothesis) or if, instead, they originate from distinct populations (alternative hypothesis). The results of the Mann-Whitney test for the six variables listed above can be found in table 1.

**Table 1 – Results for the Mann-Whitney test, grouped by “period before the arrival of *Troika*” and “period after the arrival of *Troika*”**

	Incoming*	Completed*	Pending	Procedural balance*	Clearance rate*	Disposition time*
<b>MANN-WHITNEY test value</b>	615,000	64,000	240,000	196,000	154,000	204,000
<b>Z value</b>	-1.436	-6.950	-5.188	-5.629	-6.049	-5.549
<b>p-value (2-tailed)</b>	0.151	0.000	0.000	0.000	0.000	0.000

Source: prepared by the authors.

\* Values adjusted for seasonality.

The null hypothesis occurs only in the variable corresponding to the incoming civil enforcement actions, adjusted for seasonal effects (p-values=0.151>0.05). This means that only for this variable can one assume that the two data sets come from the same population. For the remaining five variables, the null hypothesis is rejected (p-values=0.000<0.05), and the alternative hypothesis that the two data sets do not come from the same population is validated.

Interpreting these results is extremely interesting. On the one hand, it is possible to conclude that over the 78 months analyzed, there was no significant change in society’s demand for prompt resolution of this type of cases. The difference of about 906 units in the median of the incoming cases adjusted for seasonality (median of 21,720 incoming cases by month before the arrival of *Troika* to Portugal and of 20,814 incoming cases a month after the arrival of *Troika* to Portugal) is statistically significant. However, the same cannot be said of the supply of the judicial system in this particular case. The difference of about 8,438 units in the median of the completed cases adjusted for seasonality (median of 15,548 completed cases per month before the arrival of *Troika* to Portugal and of 23,986 completed cases per month after the arrival of *Troika* to Portugal) is particularly clear based on statistical evidence of a substantial increase in the supply. This profound change in the supply is reflected in turn in the results obtained at the level of the remaining composite indicators presented in this study.

In terms of procedural balance adjusted for seasonality, the difference of about 14,772 cases in the medians (median of +6,531 cases per month before the arrival of *Troika* to Portugal and of -8,241 cases per month after the arrival of *Troika*) is also marked and shows that there is statistical evidence towards a substantial improvement in the procedural balance at the level of the civil enforcement actions. This improvement is not merely quantitative, but qualitative as well, in the sense that in the months prior to the arrival of *Troika* to Portugal the median procedural balance was positive (hence, unfavorable) and in the months following the arrival of *Troika* it turned negative (hence, favorable, indicating a reduction in the number of pending actions).

Considering, in turn, the clearance rate, adjusted for seasonality, the difference of 45.1 percentage points in the medians (median of 71.2% before the arrival of *Troika* to Portugal and of 116.4% after the arrival of *Troika*) is relevant and enables us to draw the conclusion that the statistical evidence indicates significant improvement in clearance rates of civil enforcement actions. This improvement, as is the case with the procedural balance is not merely

<sup>17</sup> Shapiro-Wilk test (Shapiro and Wilk, 1965).

<sup>18</sup> The p-values for the sets of months before and after the arrival of the *Troika* to Portugal were, respectively: incoming cases adjusted for seasonality (0.002; 0.000); completed cases adjusted for seasonality (0.657; 0.000); pending cases (0.001; 0.000); procedural balance adjusted for seasonality (0.009; 0.107); clearance rate adjusted for seasonality (0.515; 0.017); and disposition time adjusted for seasonality (0.012; 0.754). We recall that the null hypothesis of the test assumes that the population follows a normal distribution, so any p-value of less than 0.05 implies the rejection of the null hypothesis and the acceptance of the alternative hypothesis that the data do not follow a normal distribution. In none of the variables under consideration the pair of p-values was simultaneously higher than 0.05.

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quantitative, but qualitative as well, in the sense that in the months prior to the arrival of *Troika* to Portugal the median clearance rate was unfavorable (less than 100%) and in the months following the arrival of *Troika* they became favorable (more than 100%, also indicating a reduction in the number of pending actions).

In terms of the disposition time adjusted for seasonality, the difference of 743 days in the medians (median of 2,166 days before the arrival of *Troika* to Portugal and of 1,423 days after the arrival of *Troika*) is extremely relevant and supports the conclusion that the statistical evidence reflects a significant improvement in the disposition time for civil enforcement actions. This improvement suggests obtaining important celerity gains of the system in terms of civil enforcement actions (effectively, the reduction of 743 days in the disposition time corresponds to a reduction of more than two years in this indicator).

The results presented above concur overall with the results obtained in terms of pendency, which begin to be clearly visible about 18 months after the start of the assistance program. However, the relatively low starting point and the sharp rise in the number of pending cases over the months prior to the signing of the *MoU* between the *Troika* and the Portuguese State result in a difference of 178,627 units in the medians of the pending cases for each of the periods (median of 1,053,059 pending cases before the arrival of *Troika* to Portugal and of 1,231,686 pending cases after the arrival of *Troika*). Once again it is possible to draw the conclusion that there is statistical evidence to the effect that the two sets of data do not come from populations with similar characteristics.

## 6. Discussion and Conclusions

In May 2011, when the Portuguese institutions started the sectorial works in the justice area to pursue the objectives set out in the *MoU*, the judicial system was struggling with rampant increases in the number of pending enforcement actions, a phenomenon certainly not unrelated to the severe worsening of the socio-economic and financial situation of the country. The increase in the number of this type of pending cases was accompanied by unfavorable readings in almost all major indicators commonly used to measure the effectiveness, efficiency and quality of European judicial systems<sup>19</sup>.

In June 2014, it was observed that the situation was radically opposed, after an objective, methodical and not biased reading of the data. On the one hand, and as an extremely positive data, it appears that statistically there were no changes on the demand of society for such solutions to conflict resolution. The importance of this fact derives from the care that was put in the design of the measures implemented, which proved to be endowed with neutrality at this point, neither encouraging nor discouraging the social agents (economic operators in particular) to resort to court-based litigation. Furthermore, the system's supply increased significantly, reflecting the values obtained in indicators such as procedural balance, clearance rate or disposition time. Lastly, the combination of these two factors, maintenance of the demand levels and increase of the system's supply levels (and consequent reflex on the indicators of efficacy, efficiency and quality) led first to the stabilization in the number of pending civil enforcement actions and, some 18 months after the beginning of the works, to its sharp decline.

While it is true that one should not be tempted to succumb to the reasoning fallacy *post hoc ergo propter hoc*, the truth is that the measures listed in the point regarding the framework and objectives, seeking to achieve the qualitative and quantitative results described throughout this article and, given a *ceteris paribus* scenario, with the absence of any other plausible explanation for the observed phenomenology, allow us to connect the last missing causal link in all the arguments advanced.

On the basis of the empirical study of the available data and the resulting data, we conclude that under the Memorandum of Understanding on Economic Policy Conditionality co-signed by Portugal, the European Commission, the European Central Bank and the International Monetary Fund, the justice sector and, more specifically, the processing efficiency in civil enforcement actions achieved a significant public policy implementation success story for Portugal.

We suggest that future efforts on this issue follow two alternative paths. The first is to undertake similar empirical studies on other sectors of activity belonging to the public sphere whose objectives were clearly set forth in the *MoU*. This will enable a broader view of the actual success of the adjustment program for Portugal. The second is to undertake empirical studies of a similar nature on the justice sector and/or other sectors, in other countries where the aforementioned international institutions have recently intervened in similar fashion. It will, thus, be possible to determine whether the successful story resulting from the experiment carried out in the justice sector in Portugal was the exception or, assuming consistent results, is the rule in other countries that have been the target of various types of assistance and intervention: Greece, Ireland, and the less known and less covered cases of Spain, Cyprus, Hungary, Latvia and Romania.

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<sup>19</sup> View, for instance, the reports on the evaluation of the European judicial systems of the European Commission for the Efficiency of Justice - CEPEJ, 2005, 2006, 2008, 2010, 2012, 2014).

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