Chapter 6
Challenges and Ambiguities of the Policies for Immigrants' Regularisation: The Portuguese Case in Context

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6.1 Introduction

Regularisation of undocumented immigrants is part of the Portuguese panoply of mechanisms constructed to deal with migration since the early 1990s. Despite the change in the paradigm of the regularisation processes that took place in 2007 (from extensive extraordinary regularisations to case-by-case ones), the maintenance of such procedure and its relevance as a mechanism that migrants have to accede rights seems to point both to the inefficiency of the formal immigration channels and a certain normalisation of irregularity in Portugal – even if the existing clues point to a decrease in the number of irregular foreigners in comparison to the situation experienced in the beginning of the 2000s. This picture supports the idea of a systematic lax attitude towards informality and migration control, which corresponds to components of the supposed common migration regime of the Southern European countries (Finotelli, 2009).

In the first part of this chapter, through frame analysis of the evolution of regularisation mechanisms in Portugal since the early 1990s, we try to uncover the motives behind the successive devices and to discuss the political interactions that supported them, from the political consensus dominant until 2012 to the evidence of fragmentation and politicization taking place afterwards. For this, we look to the legal instruments issued between 1992 and 2007 that opened extraordinary windows of regularisation for immigrants in Portugal. Then, we complement this analysis with an overview of the additional legal diplomas issued after 2007 that, in different ways, impact on regularisation issues, now in a novel framework based on

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case-by-case analysis. The reading of the laws has been complemented with an analysis of the Parliamentary voting behaviour of the parties and with statistical elements concerning the number of people that applied in each regularisation. In order to frame the process into the economic evolution of Portugal in this period, some data have been collected, namely the unemployment rate.

The aforementioned inputs allow us to confront the issue of regularisation – a key element in the Portuguese immigration policies – with elements pulled from other European countries, based in specialized bibliography, media references and analysis of some documents concerning regularisation processes. This enables us to position regularisation into the debate about the divergence or convergence of migration regimes, considering specifically the Southern European (including Portugal) and the North-Western European ones.

In the second part of the chapter, we move from regularisations and migration policies to the broader perspective of migration regimes, a concept that has been marked by a fluid and even polysemic use. We use the ideas of Rass and Wolff (2018) and Cvajner et al. (2018), who see migration regimes as a process combining regulation and action in a migration governance prospect, involving a whole set of interrelated actors bounded by necessary and/or contingency interactions. This includes the notions of unequal power relations and access.

With this in mind, we align our perspective with the conceptual guidelines of this book. We develop an argument that challenges the aforementioned categorisation of the European migration regimes (which also includes a third one: the Central and Eastern European – Arango, 2012), calling upon different commonalities and distinctions that may change with the contexts. Even if shared contextual elements such as recent political histories, economic restructuring processes, dominant labour market features, and particularities of welfare state regimes frame migration regimes and allow a basic clustering of European countries, we argue, using the Portuguese case, that these regimes produce continuums, and their borders are more fluid than rigid. Specific political cycles are relevant in understanding the "regularisation options," namely at a juncture marked by increasing politicization of immigration issues.

6.2 Regularisations in Portugal: In Search of a Policy

6.2.1 A Series of Policy Measures

Portugal is often considered within the overall framing of the Southern European case, yet its specific context remains distinct (Baganha & Peixoto, 1997; Malheiros, 2012).

Contemporary foreign immigration to Portugal began in the 1980s, in part due to the general factors that explained its increase elsewhere, but also due to specific national circumstances resulting from the country's move from dictatorship to

democracy in 1974, and the following decolonisation. The bulk of the new foreign inflows came from the African ex-colonies, particularly Cape Verde, later joined by Brazil. An immigration landscape built around a common language and former socio-political ties was a landmark of the country from the beginning. Democracy, the new immigration context and the path towards the adhesion to the European Community (which materialised in 1986), explained the need to draft the first immigration law, launched in 1981. Part of its rationale derived from the prospective EU obligations, which required a strict control of international borders. But, as will be further described in this article, the series of policy initiatives that were enacted afterwards are largely specific to the Portuguese case.

Immigration policy in Portugal has been the object of several studies which highlight its main traits and framework (see, among others, Baganha, 2005; Fonseca et al., 2005; Carvalho, 2009, 2018; Peixoto et al., 2009; Acosta Arcarazo, 2013; Padilla & França, 2016; Sampaio, 2017). The object of this section is not to review in detail all such developments, but rather to focus on the measures targeting irregular migration.

The policies enacted to tackle irregular immigration were exemplary in the need to face new challenges, using both already-tested mechanisms and novel policy initiatives. The complete list of regularisation measures adopted by the Portuguese governments is presented at Table 6.1. The policy solutions have varied, and many have been adopted regardless of the political orientation of the governments (left or right wing). Between the early 1990s and the mid-2000s, the principle of extraordinary regularisations was adopted. They differed from one other: some consisted of

Table 6.1 Main regularisation measures

Year	Measures	Number of regularised individuals
1992–1993	Law-decree n° 212/92 of October 12: First extraordinary regularisation process.	39,166
1996	Law n° 17/96 of may 24: Second extraordinary regularisation process.	35,082
2001	Law-decree n° 4/2001 of January 10: "Stay permits" mechanism, which corresponded, in practice, to a third extraordinary regularisation process.	183,833
2003	Agreement between the Federative Republic of Brazil and the Portuguese Republic, on the Reciprocal Hiring of Nationals, signed on 11 July 2003: regularisation of Brazilian workers in Portugal, as well as Portuguese workers in Brazil.	16,173
2004	Law-decree n° 34/2003 of February 25, and regulatory-decree n° 6/2004 of April 26: Regularisation of immigrants, extending to all the rights acquired by Brazilians in 2003.	n.a.
2007	Law n° 23/2007 of July 4, and regulatory-decree n° 84/2007 of November 5 (followed by several modifications: Law n.° 29/2012 of august 9; law n° 56/2015 of June 23; law n° 63/2015 of June 30; law n° 59/2017 of July 31; law n° 102/2017 of august 28; law n° 26/2018 of July 5; law n° 28/2019 of march 29): Ongoing regularisation model.	n.a.

Source: Adapted from Sabino et al. (2010)

general amnesties, others relied on economic conditions and others depended on bilateral agreements. Since 2007, extraordinary regularisations were replaced by an ongoing case-by-case model, which remains as a solution for the structural problem of irregular migration until today. The ongoing regularisation model has survived several governments and major economic and social crises, including the financial turmoil of 2011–2014 and the Covid-19 pandemic.

The first two policy initiatives were classic extraordinary regularisation processes and somehow mark the formal recognition of the importance of irregular migration. By this time, the migration turnaround of Portugal started to be visible: the decrease of emigration due to a shift in economic growth in the main destination countries of Europe since the mid-1970s and the subsequent adoption of restrictive policies was coupled with an increase of foreign immigration, largely a result of the decolonization process that took place in 1974–75. After the initial wave of *retornados*[1] in 1974–1975, successive waves of immigrants coming from the ex-colonies, now turned foreign citizens, came to Portugal. Many entered without an appropriate visa or overstayed, thus becoming irregular migrants. The improvement of the economic condition of the country, particularly after joining the European Community in 1986, favoured this movement. A large coalition of interests, described ahead, created the conditions for the regularisations of 1992–1993 and 1996, granting legal status to approximately 39,000 and 35,000 individuals, respectively.

A third process of regularisation, the largest until today, occurred in 2001. This time it was far from a classic regularisation process. It started with the acknowledgement of a new wave of foreign immigrants arriving since the mid-1990s, resulting from a new period of economic growth. Unlike the former inflows, African immigrants coming from the ex-colonies were not dominant, but rather the Brazilians, and a new wave from Eastern Europe, primarily Ukraine. Some of these immigrants entered irregularly, but most of them arrived with tourist visas and overstayed. Despite their status, they were often recognized to be vital to fulfil labour shortages in sectors under expansion, particularly construction and personal services. The 2001 law did not grant automatic legal residence to these new immigrants. Instead, it created new "stay permits", which in practice corresponded to work visas conceded after arrival. The condition was presenting a labour contract or a promise of contract to the authorities. After 5 years of renewal, the new stay permits were reconverted into full residence permits. Under this legal framework, almost 184,000 immigrants were regularised.

The fourth and fifth processes of regularisation were also of a non-classic type. The fourth resulted from a special bilateral relationship with Brazil (Padilla, 2007). The "second wave" of Brazilian immigration was occurring since the late 1990s, the largest inflow ever coming from this source (Malheiros, 2007). A special agreement was signed between the two countries in 2003, allowing the regularisation of approximately 16,000 Brazilians working in Portugal (much more than the irregular

[1] Portuguese or people with Portuguese ancestry that left the Portuguese colonies in Africa during the decolonization process and "returned" to Portugal.

Portuguese immigrants then living in Brazil, also entitled to regularisation). In 2004, a similar type of measure was extended to non-Brazilian immigrants, thus corresponding to a fifth regularisation. The objective was extending to all immigrants the rights that had been granted to Brazilians beforehand. In both cases, the regularisation depended on specific conditions, namely presenting a labour contract or proof of having made payments for social security for a given period – not considered problematic given most irregular immigrants were employed.

From 2007 onwards, a new paradigm emerged. Instead of granting regularisation on an extraordinary basis requiring the enactment of special processes for given periods of time, the government created a mechanism of on-going regularisation, which could be carried out at any moment. The procedure had existed, in fact, beforehand, as it had been created in 1998 when a new immigration law was approved (Baganha, 2005). However, its application on a wide-scale basis only began in 2007.

The most important instrument of the new law was Article 88 (Acosta Arcarazo, 2013). Instead of the requirement that a valid visa be presented to obtain legal residence, the law accepted that a residence permit could be granted, for work purposes, under specific circumstances. These included having a stable work relationship proved by a contract, a trade union, or an official entity (including immigrants' associations with a sit at the Consultative Council for Migration); having entered and stayed legally in Portugal (although this requirement could be dismissed after a penalty); and having registered and paid contributions to social security (a usual situation among irregular immigrants). Article 88 targeted subordinate employees, the most common situation, yet independent workers were also entitled to such benefits, under Article 89. In all cases, the access to legal status was not immediate: it depended on a personal interview. According to some authors (Acosta Arcarazo, 2013), this requirement was done in order to avoid a massive "pull effect" over further immigrants still abroad.

Besides immigrants engaged in work relations, the new law also created provisions for the ongoing regularisation of other individuals. These included victims of trafficking, thus respecting the EU directive on the theme. It also included children in specific circumstances, such as minors born in Portugal from holders of residence permits, or who attended a pre-school, primary, secondary or professional education; and immigrants in specific circumstances, such as adults with foreign parents born in Portugal yet who remained in the country from under 10 years of age and onwards. Also included were individuals with long term medical needs; and foreign citizens requiring exceptional responses, including reasons of national interests, humanitarian reasons; and other public interest motives.

Although former laws, mainly since 1998, had mechanisms that allowed the granting of legal residence to irregular immigrants in exceptional circumstances, it is widely recognised that the 2007 law was very progressive in this domain, capturing a wide array of situations non-existent beforehand. The number of immigrants that have benefitted from these provisions is not known. However, all sources consider the numbers to be quite high. For example, it is possible that by 2010, nearly

50,000 immigrants had already been given legal status under the new law (Acosta Arcarazo, 2013).

More than a decade after its approval, the 2007 law is still in place today, despite the changes introduced from 2012 to 2019. Notably, the law still contains the provisions concerning regularisation that were present from the beginning, even if some changes were introduced in Articles 88 and 89. These changes had the objective of extending or facilitating the process of regularisation, although they came with a different rationale – examined in the next section. For instance, the change from wage earner to independent worker was allowed; the creation of innovative entrepreneurial initiatives was rewarded; overseas students mobility stimulated; and the need for proof of legal entry in the country was discarded. The progressive approach enacted in 2007 was kept even during the financial turmoil of 2011–2014, when a centre-right government led the country, and was further enlarged after 2015, when a Socialist Party government, supported by an extended Parliamentary left-wing coalition, led the country.

6.2.2 The Changing Alignment of Interests: The Erosion of the Political Consensus Around Immigration?

The reasons for the policy choices relating to irregular inflows were diverse. It has been argued that the two first general amnesties, in 1992–1993 and 1996, resulted from a broad coalition of interests, which included pro-immigrant and pro-human rights associations, trade unions and several political parties spanning from left to right (Peixoto et al., 2009). The left-wing parties were the most proactive on this issue and advocated the rights' dimension, yet the right-wing parties were sensible to the irregular immigrants' profile. The majority of them were African immigrants coming from the ex-colonies, after the decolonisation process. The responsibilities inherited from a long colonial past, the conscience of the problems felt by the new independent countries, as well as the cultural continuities with the new immigrants (mostly Portuguese speakers), are explanations for the new policy options.

The regularisation enacted in 2001 had a clear economic rationale. The economic expansion of the time was partially linked to the EU membership and consequent European funds. This explained the accrued labour needs in the low-skilled economic sector, from construction to the service industry, and in the highly-skilled segment, such as professional services. Many of these sectors, particularly the former, were active employers of immigrants, either those already in the country or others recently arrived, such as the Brazilians or the Eastern Europeans. The recognition of such labour needs, the pressure from employers and, of course, the admission of a rights-based policy, were the main factors behind the new "stay permits" policy. These permits were a temporary solution to a labour problem – although it turned quickly into a permanent one. The new 2001 law was also innovative when it created the principle of "labour quotas", based on economic needs, to drive new

immigration inflows; the creation of such quotas is said to be the result of the negotiation between left and right-wing parties to approve the law.

The 2003 regularisation is directly tied to the bilateral political relationship with Brazil. Former diplomatic problems between the two countries were related to migration (such as the difficulty for Brazilian skilled immigrants to exercise their profession in Portugal, for example dentists, and the increased number of Brazilians scrutinized at Portuguese airports – Feldman-Bianco, 2001). The economic dimension of Brazil and its political importance also certainly played a role in the agreement, as it was focused on Brazilians already working in Portugal (and Portuguese working in Brazil), who were fast becoming the main source of foreign labour in the country.[2] When civil society actors raised the attention of similar needs among foreign groups other than Brazilian and pushed back against the exceptionality of the 2003 regularisation, the idea became generalized that no such privilege could be granted to just one country. The principles of the 2003 regularisation of Brazilians were thus extended to all immigrant workers in 2004.

As previously discussed, there was a change in paradigm from 2007 onwards. Policies after this time shifted from recurring to extraordinary regularisations, to a policy of regular and ongoing ones. The change was motivated by internal and external factors (Sampaio, 2017). Among the latter, the resistance of other EU countries to mass regularisations is of foremost importance (Finotelli & Arango, 2011). The change in the EU mood has also led other countries, such as Italy or Spain, to change their policy approach. The mechanism adopted in Portugal persisted over the years, with only some small changes which simplified and enlarged its scope.

Ordinary regularisations under the 2007 Immigration Law were established by a centre-left government, led by the Socialist Party (PS). It fell within the context of economic uncertainty that preceded the harsh years of austerity and financial bailout in 2011–2014. During the financial turmoil, the political guidance of the country geared towards a right-wing leadership (PSD-Liberal Party and CDS-Christian Democrats), with an economic programme marked by late neoliberal principles negotiated with a Troika of international borrowers (IMF, ECB and EC). Even if the conditions for the application of the regularisation principle were changed slightly, the overall policy measures were not called into question. After 2014, the arrival in power of a left-wing government, led by the Socialist Party (PS), this time with Parliament support of the radical left (PCP-Communist Party and BE-Left Wing Block), not only maintained the regularisation mechanism, but even slightly enlarged the possibilities of mobilising it. Finally, no attempts to change it were made since the pandemic started in 2020.

It may be hypothesised that, notwithstanding the change of paradigm in 2007, many of the motives that explained regularisations remained the same. On the one hand, the economic rationale and particularly the acknowledgment of the need to fill vital labour shortages, was almost always present. According to some authors, there

[2] Brazilian immigration to Portugal increased substantially in the final years of the 1990s and early 2000s, then becoming the largest group of foreign nationals in the country.

was a hidden "expansionary approach" of the state behind these policies (Carvalho, 2018). Articles 88 and 89 of the law were clearly directed to an *ex-post* admission of the immigrants already living in Portugal and fulfilling the country's labour market needs. The law, in this point, was a formal recognition of a *de facto* integration. However, on the other hand, the defence of immigrants' rights was subjacent to these initiatives. Regardless of a possible instrumental approach, the regularisation provided formal rights to immigrant workers from which they were initially excluded. In addition to workers, rights were awarded to immigrants not belonging to the labour force, including victims of trafficking, children born in Portugal who attended formal education, and immigrants present in the country from when they were less than 10 years old.

Further explanations might help explain Portugal's persistence of immigrants' regularisation policies. The need to control immigration, uncovering situations of irregularity and invisibility, has certainly been an underlying motive to politically address the issue (Malheiros, 2008). The need to eliminate unfair competition between immigrants and natives in the labour market was another factor that explained the persistence of such policies. Irregular migration can be accepted by unscrupulous employers, but has the collateral effect of damaging the working conditions of the native labour force – in addition to excluding immigrant workers from constitutional rights.

The positioning of different stakeholders may also help to explain the political options. Since the late 1980s, many coalitions have been enacted – although the degree of cohesion and proactivity of the actors have varied. Immigrant and human rights associations have been on the frontline of the battle for regularisations since the very beginning (Horta, 2010). Trade unions have also been a constant part of this movement, being active in most processes. Following ideological principles including the protection of workers' rights and the need to fight social dumping, the main trade unions in Portugal have been always vocal in this domain (Malheiros, 1998; Kolarova & Peixoto, 2009). Less visible were employers, though several observations indicate that they were behind the pressure to admit and regularise immigrants, clearly a vital resource to the functioning of low wage, labour-intensive sectors (Peixoto et al., 2009; Carvalho, 2018). The affordability and passivity of immigrant labour force was maybe an extra reason for their adherence. The Catholic Church was also among the more active actors in these policies, combining the supportive action in the civil society with the formal engagement of its representatives in official entities inspired by Catholic principles, including the High Commission for Migration (Esteves et al., 2003; Peixoto et al., 2009).

One of the main points highlighted in this domain was the broad political consensus around the theme that existed for long (Peixoto et al., 2009; Sabino et al., 2010), at least until the reform of 2007. The fact that immigration, and particularly irregular immigrants, have not been the object of high politicization has contributed to that consensus. However, it is possible to argue that after 2012 and especially after 2015, the prevailing dominant logic of consensus has been replaced by more explicit divergent discourses that are leading to systematic left-right divides in Parliament voting.

In fact, between 1992 and 2007, from the six bills on regularisation issues that were approved by the Portuguese Parliament, only two received votes of rejection and none of these expresses a left-right divide (see Table 6.2). After 2012, seven legislative changes were introduced in the 2007 Immigration Law, displaying a

Table 6.2 Position of the main political parties regarding regularisations

Year	Policy measures	Parties in the government	Parliament vote
1992	Law-decree n°212/92 of October 12: First extraordinary regularisation	PSD	Yes: PS, PCP, PSD, CDS-PP No: –
1996	Law n°17/96 of may 24: Second extraordinary regularisation	PS	Yes: PS, PCP, PSD, CDS-PP No: –
2001	Law-decree n°4/2001 of January 10: Immigration law / third extraordinary regularisation	PS	Yes: PS No: PCP, BE, PSD Abstention: CDS-PP
2003	Bilateral agreement was signed on the 11th of July between Portugal and Brazil (fourth extraordinary regularisation)	PSD and CDS-PP	Yes: PS, PCP, BE, PSD, CDS-PP No: –
2004	Article 71of the regulatory-decree n°6/2004 of 26 April regarding the law-decree n°34/2003: Fifth extraordinary regularisation	PSD and CDS-PP	Yes: PS, PCP, BE, PSD, CDS-PP No: –
2007	Law n°23/2007 of July 4 regulated by the regulatory-decree n°368/2007 of November 5th	PS	Yes: PS, PCP, PSD No: BE, CDS-PP
2012	Law n.° 29/2012 of august 9 – First modification of the law n°23/2007	PSD and CDS-PP	Yes: PS, PSD, CDS-PP No: PCP, BE, PEV
2015	Law n° 56/2015 of June 23 – Second modification of the law n°23/2007	PSD and CDS-PP	Yes: PS, PSD, CDS-PP No: PCP, BE, PEV
2015	Law n° 63/2015 of June 30 – third modification of the law n°23/2007	PSD and CDS-PP	Yes: PS, PSD, CDS-PP No: PCP, BE, PEV
2017	Law n° 59/2017 of July 31 – fourth modification of the law n°23/2007	PS	Yes: PS, PCP, BE, PEV, PAN No: PSD, CDS-PP
2017	Law n° 102/2017 of august 28 – fifth modification of the law n°23/2007	PS	Yes: PS No: PCP, BE, PEV Abstention: PSD, CDS-PP, PAN
2018	Law n° 26/2018 of July 5 – sixth modification of the law n°23/2007	PS	Yes: PS, PCP, BE, PSD, CDS-PP, PEV, PAN No: –
2019	Law n° 28/2019 of march 29 – seventh modification of the law n°23/2007	PS	Yes: PS, PCP, BE, PEV, PAN No: PSD, CDS-PP

Source: Sabino et al. (2010) and own elaboration

different panorama in terms of political alignments. During the period of the right-wing government (2011–2015), three bills of change were approved enhancing the links between migration, capital and skills, and also strengthening the securitarian principles. The right-left divide in the voting emerged, with the government parties voting "yes" and the radical left-wing ones voting "no". The centre-left Socialist Party joined the government majority and voted favourably the three diplomas.

This was followed by a second period of change, after 2017, which was marked by a shift in the policy guidelines and in political alignments, with a readjustment of the left-right divide that actually accentuated. The four bills of change approved in this period were geared towards the protection of foreign minors, the simplification and the enlargement of the case-by-case regularisation procedures. From these bills of change, only one did not receive favourable voting from all left-wing parties. The rationale behind these changes providing formal recognition and access to economic and social rights are in line with left-wing ideology, which tend to be less nationalist (*strictu sensu*) and securitarian, and also with the humanitarian principles of immigrant NGOs and Catholic Organisations.

Despite a wide coalition of interests around regularisation of immigrants following 2007, policy evidence from the last decade points indeed to some erosion. First, the fragmentation of the Parliament composition began in 2015, with the election of the first MP from an animalist party (PAN – People, Animals, Nature). Four years after, the number of PAN MPs passed to four and three additional new parties elected one parliamentary each. Among these is CHEGA, a far-right political party, with an aggressive nationalist and anti-system discourse, supported by conservative and identity arguments that explicitly assume a xenophobic view of certain minority groups, particularly gypsies (Madeira et al., 2021). The fight against "illegal migration" is also a programmatic priority of CHEGA, involving more pro-active expulsion measures. Thus, the presence of a far-right nationalist and populist party in Parliament, for the first time in Portuguese democracy, is the second major change in the recent political spectrum. Third, the neoliberal trends and the austerity policy of the 2011–2014 period led to widespread impoverishment and increasing inequality, justifying the voting shift towards centre-left and left-wing parties which became the majority in Parliament.

At the same time, some evidence of erosion of the most traditional parties of the system, who are present in the Parliament since the establishment of democracy in the mid-1970s, is contributing to a more polarized political system. The inability of these parties to respond to the growing economic difficulties of a large proportion of the population, who feels marginalized by the political system and threatened in identity terms (Ferrão, 2019; Fukuyama, 2018), helps explain political polarization and the adhesion to far-right parties with xenophobic and anti-immigrant discourses, not only in Portugal but also in several other European countries. The electoral attraction of these parties, namely CHEGA, is threatening traditional right and centre-right parties and pushing them to more conservative and authoritarian discourses, which move away from former agreements and risk jeopardising existing consensus around issues such as immigration.

Despite the changes, the main point to conclude is the persistence of the regularisation principle until today, based in an ongoing case-by case policy procedure from 2007. As discussed in this section, the imperatives behind such policy were diverse – and sometimes contradictory. They included an economic rationale based on the country's labour needs, a rights-based and humanitarian perspectives and broad geopolitical interests. However, as some observers have noted, the mechanism of ordinary regularisation has been far from automatic or transparent. In fact, the authorities have always maintained the ability to decide in favour or against the immigrants' requests, under motives that are not entirely clear – a problem that has been the object of scarce research and has often brought criticism. A recent work carried out by Costa (2020), applying the theory of "street level bureaucrats" to the operational procedures of the law, prove how the regularisation process is hermetic. Although discretionary applications of the law are common in every bureaucracy, the absence of clear guidelines causes frequent delays and leads to unclear procedures.

6.3 The Portuguese Case in Perspective

As seen above, in 2007 the Portuguese policies for immigrants' regularisation experienced a major shift, going from a rationale of extensive extraordinary processes to a logic of ordinary case-by-case ones. Despite this change, the maintenance of the legal possibility of ex-post regularisation seems to point to the recognition of the inability to adjust formal immigration channels to the migratory pressure and labour needs. Actually, the widening of the regularisation routes and the simplification of procedures adopted in 2017 apparently confirms the self-acknowledged inability for Portuguese authorities to regulate *ex-ante* immigration flows. Indirectly, this would also mean that Portugal should be among the EU countries with higher levels of irregular migrants.

In order to close the debate that has been developing along this chapter, we would like to challenge the two ideas expressed in the previous paragraph (the lack of capacity to regulate immigration flows and the high levels of irregularity in the European context) and to frame them in the wider context of the European responses to irregular migration. In other words, we want to address the merits and weaknesses of the Portuguese immigration regime, which may be considered a part of the wider Southern European model (Peixoto et al., 2012) and is supposedly marked by a lax migration regime and ambiguity towards irregular migrants (Finotelli, 2009). These features apparently correspond to some distinctive elements that characterize the South-North divide in relation to European migration regimes.

Arguments in favour of a common Southern European migration model have been advanced in the 1990s (see, for instance, King et al., 1997) and reiterated again more recently (Peixoto et al., 2012). Though the term employed by these

researchers was "model",[3] we may consider it equivalent to the notion of a migration regime, mentioned at the beginning of this text and used by Arango (2012) to establish the differences between the three basic regimes in Europe: Southern European, North-Western European, and Eastern and Central European. The differences between these clusters of countries emerge from a range of dimensions (from specific admission policies to integration schemes, passing by regularisations and labour relations) included under the notion of immigration policies, that are framed in the general demographic contexts and socioeconomic features that characterize each of them.

Having taken into consideration this approach, Portuguese immigration policies tend to be interpreted within the framework of the Southern European migration regime (Arango, 2012), eventually constituting a particular subsystem, together with Spain, classified as the Iberian variant (Malheiros, 2012). A systematic reading of the Portuguese case requires a combined analysis of the fluid management of flows (including regularisation) and integration principles, something that has also been underlined by Finotelli (2009) while studying the Italian and German migration regimes. The political consensus established around migration policies that dominated until recently implicitly assumed that fast labour market adjustments and precariousness, combined with high levels of informality,[4] demanded a possibility of *ex-post* adjustment to labour needs (Malheiros, 2012; Carvalho, 2018). Because recruitment channels were everything but efficient (for instance, the labour quota system that lasted between the 2001 and 2007 laws never functioned), the solution was to rely on legal entries, irregular overstaying and "extraordinary" regularisation, as evidenced in the previous section. The consequence of this was both an exposure of foreign workers to labour exploitation and the risk of increasing unfair competition with domestic workers, leading to potential processes of social dumping.

This picture clarifies the bases for the political consensus around immigration policies, including the rationale of *ex-post* regularisation: on the one hand, the sectors more concerned with employers' interests and economic competition assumed the advantages of this format of workers' recruitment as a form of cost reduction and flexible adjustment; on the other hand, the sectors that privileged social protection and humanitarian approaches found in regularisation the way to equality of rights and citizenship, an issue that was also supported by trade unions in their fight against social dumping. This consensus was established in a period of economic expansion in the 1990s, and lasted while the Portuguese economy displayed ambiguous signs of contraction and expansion between 2004 and 2011. Once

[3] Though different authors use the terms "regime" and "model" to describe similar immigration frameworks, we have opted in this text for "immigration regime". The term "model" will be applied to the regularisation schemes, often designated as "regularisation models".

[4] Using the shadow economy estimates as a proxy to informality, the values found for Portugal place the country in the second highest position (after Italy) among Western European countries. The weight of shadow economy in Eastern European countries is estimated at higher levels (Schneider, 2009; Kelmanson et al., 2019).

socioeconomic decline has become continuous and extremely severe, the economic conditions for consensus around immigration decreased, followed by the aforementioned turnover in the political spectrum that also contributed to the emergence of a new frame.

In fact, the sinking of Portuguese economy, specially between 2011 and 2014, not only led to a substantial reduction in immigration inflows and even in the stocks of legal immigrants (Oliveira & Gomes, 2016), but also generated a clear reduction in irregular migrants. Using the number of foreigners found to be illegally present in Portugal as a proxy for irregular migrants, its volume follows a path that seems to adjust itself in an imperfect way to the economic short-term cycles (it declined with the harsh economic and financial crisis of 2011–2014; it clearly increased in the initial years of the subsequent recovery and declined again with COVID-19 in 2020 – see Fig. 6.1), despite being also influenced by other factors.

Having taken this into consideration, it becomes possible that irregular migration levels justifying policy measures such as extraordinary regularisations (the 1990s and mid-2000s typical procedure) or case-by-case ones (the system implemented after 2007), are more a function of economic cycles and a response to a certain type of economic demand (predominance of labour intensive industries) than the result of the implementation of policy mechanisms facilitating legalization. This is contrary to what is often stated. In other words, ex-post regularisation processes do not seem to lead to a significant increase in the number of undocumented immigrants or to produce what some authors designate as *call effect* (Orrenius & Zavodny, 2003; Fanjul & Gálvez-Iniesta, 2020). Empirical evidence does not seem to point to substantial increases in these numbers, though the transformation of international

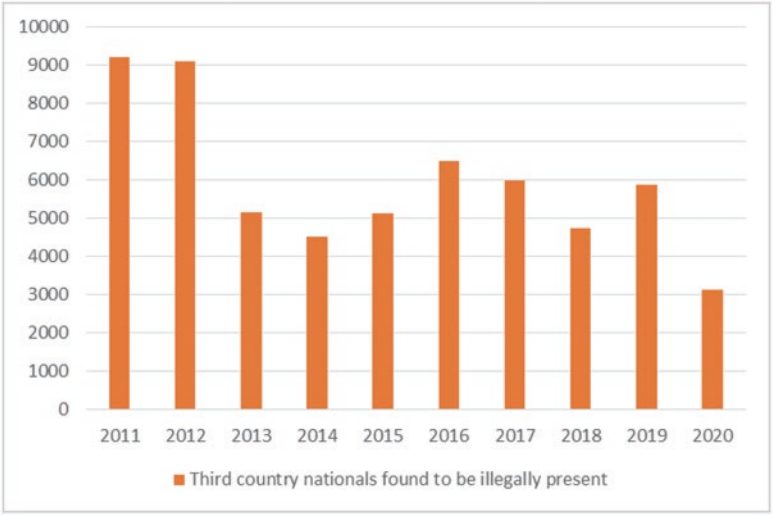

Fig. 6.1 Number of irregular migrants 2011–2020. (Sources: EUROSTAT (MIGR_EIORD) (own elaboration))

migration in a global industry involving legal and illegal activities that generate millions of euros may put the focus of immigrant traffickers and labour recruiters in the areas that have the most flexible schemes of entry and regularisation (Baganha, 2005).

Another element that needs to be addressed is the idea that the Portuguese migration regime is part of the Southern European "common" migration regime and therefore different from the migration regime of North-Western European countries (NWEs). Though we share with Arango (2012) and Peixoto et al. (2012) the perspective that common contexts (stage of the migration cycle, economic restructuring processes, dominant labour market features, particularities of welfare state regimes, etc) lead to similar migration policies, several issues point to the limits of over-generalizing the supposed commonalities among countries of the same geopolitical space. In this line, authors such as Finotelli (2009) and Baldwin-Edwards (2012) have pointed the limits of a single and unitary Southern European migration regime.

An argument that challenges this idea concerns the relevance of interdependencies within the European Union in relation to the logic of migration flows and even its management. For instance, if politicians and civil servants of Northern and Central European EU countries explicitly criticized the extraordinary regularisations that Southern European countries made in the 1990s and early 2000s (Finotelli & Arango, 2011), this should be taken more on the side of political rhetoric than on side of effective policies. Actually, the facilitation of circulation from East to West in Europe[5] that contributed to the increase in irregular migration, associated to overstaying processes in countries such as Italy or Portugal, corresponded to a process that interested NWEs countries, such as Germany, due to its intention of extending economic and geopolitical influence to Central and Eastern European States. Only in the period of economic downturn associated with the world financial crisis of 2008, were statements made and EU directives approved on pushing the abandonment of extraordinary regularisations, forced return and increasing workplace inspections (Malheiros, 2012). Therefore, more than a clear divide between two very different regimes, we have a pipeline between them, a continuum more than a break.

Furthermore, the principle of general mass regularisations has also been applied in a more limited manner and with some specifications by countries of Central and Northern Europe in the 1990s and 2000s. One example was the French operation of 1997–1998, who received 152,000 applications, of which 87,000 regularised. Another one corresponded to the German Arrangements for Right to Continued Stay (*Bleiberechtsregelungen*) of 2007, which allowed the suspension of the deportation order of approximately 50,000 irregular foreigners. Austria, Luxembourg and Netherlands also regularized undocumented workers (Kraler, 2009). These were mostly single processes in the period, and had a smaller impact than the

[5] For instance, visa requirements for the circulation of non-EU Eastern Europeans have been progressively relaxed along this period.

"equivalent" that took place in Southern Europe, requiring more years of irregular residence in the country. The intrinsic nature and final goals, however, were similar. Circumstances dictate the differences in frequency and specificities, pointing to the idea that not only were Southern European responses less exceptional when viewed from this comparative perspective, but also the use of extraordinary regularisation mechanisms can still be exceptionally mobilized in contemporary time both in and out of Southern Europe, as the recent Irish case of 2022 demonstrates.[6]

The transition to "case-by-case" regularisations was also recommended in the 2008 European Pact on Immigration and Asylum, which explicitly rejects mass regularisation programmes. Though the majority of these processes privilege humanitarian reasons to justify regularisations (Kraler, 2009), some require labour market bonds to apply for a legal status and a few even consider employment as a preferential issue, such as France, Spain (*Arraigo Social*) or Portugal. The particular situation of Spain[7] and Portugal eventually appears closer to the cases of France and Switzerland[8] than to the cases of Greece or Italy, who do not allow case-by-case regularisations. This contributes to a fissure in the rationale of a single Southern European migration regime. The Portuguese law of case-by-case regularisation is however probably the most generous among the EU Member States, as it requires only 1 year of work and contributions to Social Security, demands a work contract or a promise of work contract, and allows irregular migrants to present their demands on an accessible portal.

The aforementioned evidences and its interpretation place the justifications for irregular migration flows more on the contextual economic side than on the specific policy side. Additionally, contradictions between political rhetoric and the explicit and implicit practices of managing migration flows are evident. Finally, the so-called South European migration regime seems less exceptional then is often

[6] Ireland opened a regularisation process between the 31st of January and the 31st of July 2022 for non-EU foreigners who have been undocumented for at least 4 years at the start of the scheme, or for at least 3 years for families with children under 18. (https://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/permission_to_remain_for_undocumented_noneea_nationals_in_ireland.html). Just before the process started, estimates pointed to 17,000 non-EU foreigners living irregularly in the country and in conditions to respond to the scheme (https://www.independent.ie/irish-news/undocumented-migrants-in-ireland-offered-once-in-a-generation-amnesty-40775476.html).

[7] The *Arraigo Social* (Art. 124.2 of Royal Decree 557/2011, of 20th of April, which regulates Organic Law 4/2000, on Rights and Freedoms of Foreigners in Spain and their Social Integration) establishes the possibility of regularisation of immigrants who prove (i) that they have stayed for a minimum period of 3 years in Spain, (ii) have actually joined the labour market, by presenting a job offer for at least 1 year, and (iii) have a family bond or present a "report of roots", proof of their social integration in the country, issued by the Autonomous Community of habitual residence (Finotelli & Arango, 2011; Costa, 2021).

[8] Under certain conditions, such as having lived for several years in Switzerland and displaying a "good integration" (which incorporates the notion of generating means to survive), irregular foreigners have possibility of applying for regularisation at the Canton level, that articulates with the Federal level (Der Bundesrat, 2020).

presented, emerging a clear need to repair regime inconsistencies that are transversal and common to several EU countries.

6.4 Final Remarks

Irregular migration has become a worldwide component of contemporary migration. Global income gaps, new labour market dynamics, refugees' waves, securitarian concerns and nationalist pressures, all lead to a vast crisis of control in this area (Cornelius et al., 2004). The dimension of the problem depends more often on geographic position, lack of adequate entry channels and type of economic demand (including the size of informal economy) than effective border policing. The challenge is tackled in various ways in different geographies: whilst some countries prefer to ignore the problem, others enact deportation strategies, and some create mechanisms for regularisation – although most jump from option to option along the time. When opting for regularisation, a change from extraordinary processes, based on economic or humanitarian grounds, to case-by-case mechanisms, has been pushed by some international organisations including the EU and effectively implemented by some countries. Whatever the choice is, responses cannot be considered innocent. Regularisations may be a way of satisfying employers, enabling economic growth, or conceding rights. They are an option which context and motives deserve scrutiny.

This chapter was devoted to examining the Portuguese case. As in other Southern European countries, Portugal witnessed considerable immigration flows since the 1980s. The type of economic demand was primarily based in labour-intensive industries, and the strength of the shadow economy fuelled the inflows. Such as its Southern European counterparts, the policy responses were tentative and not capable of solving the endemic nature of irregular migration. Since the early 1990s several approaches were taken, which started as classic mass regularisations, turned to targeted regularisations and finished as a case-by-case mechanism inscribed in the law. One of the features of the Portuguese case was the alignment of interests behind such policies, joining employers, trade unions, NGOs, the Catholic Church, left- and right-wing parties. Only recently, after the economic downturn of 2011–2014, some divergence emerged. Currently, the potential for erosion is strong and the continuity of the political consensus around immigration has been called into question.

The observation of the Portuguese case leads us to equate differences and commonalities with other EU countries. As other Southern European nations (Greece, Italy or Spain), the recourse to *ex-post* regularisations has been vast. However, as in the case of Spain (and also France or Switzerland), the system has evolved to a case-by-case basis, not applicable in Italy and Greece. This challenges the image of a common and singular Southern European migration regime, at least with regard to responses to irregular migration. Moreover, immigration to Portugal – and the subsequent irregularity – cannot be dissociated from the whole of EU dynamics, thus

reflecting a global chain of events, more than a singular autonomous capacity to attract migrants. In other words, irregular inflows have largely resulted from the European framing of the Portuguese economic fabric and also from external geopolitical strategies, such as the openness of Germany and its policies towards Central and Eastern European States.

In conclusion, although the use of regularisation mechanisms as a way to address irregular immigration might be considered a characteristic feature of the so-called Southern European migration regime, it is marked by variations between countries within the region and has also been enacted in other regions of Europe. Whenever the migration pressure is strong, and whenever the context induces such a response (in economic or humanitarian grounds), regularisations remain a way of tackling the problem. Today, on a global and European level, there are no adequate channels to legally frame all potential migrants, nor are there sufficiently tough enough borders to resist such inflows. If some arguments remain to differentiate migration regimes of Southern and other European contexts, irregular migration and corresponding regularisation policies are not among the most prominent.

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