8th International Conference on Building Resilience – ICBR Lisbon'2018
Risk and Resilience in Practice: Vulnerabilities, Displaced People, Local Communities and Heritages
14-16 November 2018 – Lisbon, Portugal

Regulatory mechanisms in intergovernmental relations and citizenship in risk governance in Portugal

Abstract

This paper discusses two specific types of risks and catastrophes, forest fires and earthquakes, highlighting their similarities and differences regarding risk governance processes. About forest fires, it should be noted that the events of June and October 2017 have become a significant moment in the history of catastrophes in Portugal. Apart from the disastrous consequences of the high number of human victims, destroyed assets and burnt-out hectares, their effects have also spread across the political, social and economic dimensions that seem to reconfigure the existing risk governance processes, particularly on the exercise of an inclusive citizenship. In the same way, and assuming a significant weight around the mechanisms of risk governance, the debate has been centered on the seismic risk, due to the recovery and rehabilitation processes of part of the buildings in Lisbon, resulting, among other factors, from the current tourism development processes. Highlighting also intergovernmental relationship processes, namely in terms of production and legislative application, this situation has amassed a wide discussion over the role of professional groups and the population in general, in a communication process mainly centered on the domain of specialized protagonists, not always decoded for lay populations.

Keywords: Risk governance, intergovernmental relations, citizenship

1. Introduction

As social rupture processes, disasters derived from the articulation between society and the built environment. This assertion conducts the research of these phenomena for territories where various areas of approach are interfacing in their observation. One of these areas resides in the political and institutional relations between central and local administration, being a critical area of civil protection policies and actions. In this context, it is discussed the assignments, competencies and responsibilities to be taken in the light of disasters, namely regarding the whole cycle of catastrophes.

Another domain, also with significant representativeness in the analytical framework of civil protection, concerns the type of involvement of the populations in the activities of this system. The discussion on what kind of participation citizens should have in the policies and actions of civil protection is a recurring issue in disasters, taking relevance in the periods of relief and emergency, and immediately after them. The narratives and practises confronted here not always, or even rarely, are consensual between institutional actors, stakeholders, experts, and lay people.

A reflection will be carried in this paper on the implications arising from two types of risks and disasters which, while presenting distinct readings, and even different interpretations in the perceptions and representations of the population, have a fundamental importance in safety public policies in Portugal, either by action or by omission.

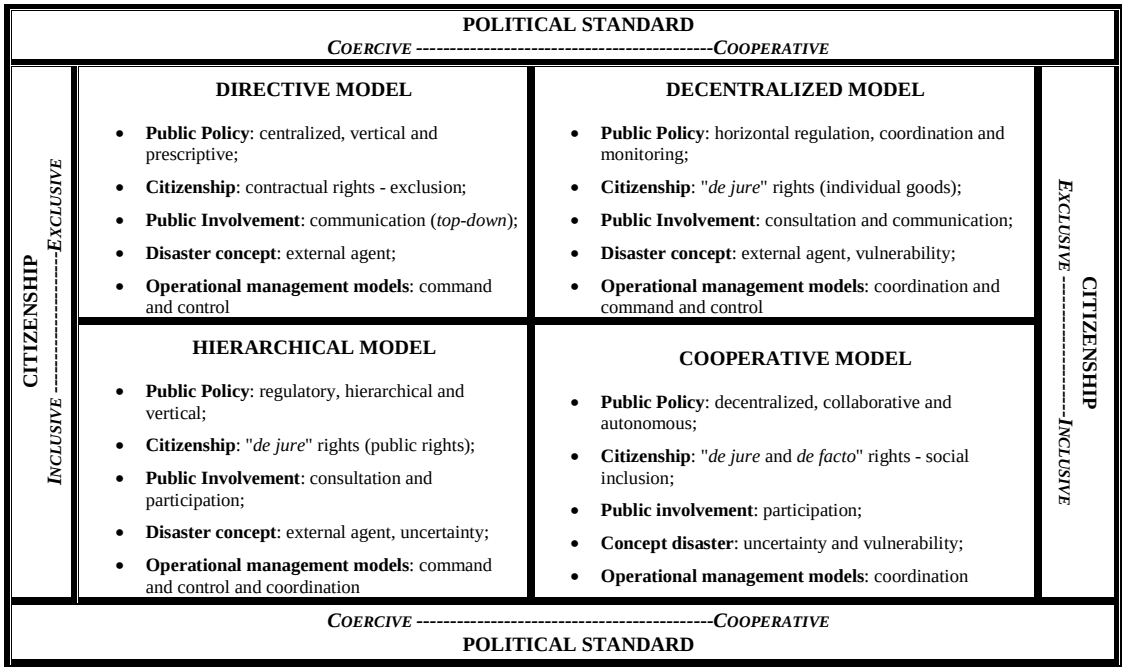
These are the situations associated with forest fires and earthquakes which, and above all in the former, record high levels of concern and discussion in the Portuguese society. It will be discussed both the social causalities and the practical and symbolic consequences that have been behind the emergence of new attitudes and behaviours. On the one hand, they have reformulated intergovernmental relations between central and local administration and, on the other hand, they have contributed for the change and (re)construction of relationship processes between the State and the populations, until then virtually non-existent or merely residual.

2. A hierarchical model of risk governance

The assertion that Portugal can be characterised by a hierarchical model of risk governance must necessarily be supported explanatorily, identifying which domains lead to this finding.

Synthetically, five operational dimensions stand out – politics, citizenship, public engagement, concept of disaster, and operational management models – where, upon analysing their most individual components, its integrative articulation in an explanatory reading is promoted. It is in the result of this integration that the four ideal typical models of risk governance are obtained, namely directive, hierarchical, decentralised and cooperative, which are shown in Figure 1.

Figure 1 - Risk governance models (Ribeiro, 2018)



The Portuguese system is characterised, generically, by a hierarchical typological model, with the following particularities:

a. A vertical political standard, in which the central administration determines and prescribes the policies and guidelines of civil protection, seeing local authorities as regulatory agents;

b. Citizenship rights are considered constitutionally as public goods, but presented as *de jure*, and not as *de facto*;

c. Public involvement is based on communication flows of consultation, although there are examples of participation, notably in some participatory budgeting processes;

d. Disasters still have a prevalence as external agents, although they are emerging, mainly through specialists, the shifting of this conceptualisation to vulnerability and uncertainty processes;

e. In operational management models, it prevails a Command and Control logic, which has been accentuating by the arriving of new protagonists. In any case, there are also processes of Coordination, mainly located in the field of decision and strategic management, albeit with less reflection in tactical actions and operational manoeuvring.

This interpretation of the risk governance that characterises the Portuguese system will be operationalised, based on the analysis of the situation of forest fires and the seismic risk, which will be further addressed.

3. 2017 forest fires as reconfigured processes of risk governance in Portugal

The forest fires of June and October 2017 are associated with some of the worst disasters ever recorded in Portugal. The consequences from these events resonated in various areas of national life, leading to strong media reactions and pressure from public opinion.

The high number of fatalities, destruction of property and of rural and forest heritage caused a political and symbolic earthquake in the State's governance structures. The shockwaves propagated across political, social and economic dimensions that even overflowed the national scope by escalating into international contours.

The State is confronted with its failures – constitutionally, the State must ensure the safety of the populations –, being forced to focus its interventions reactively and casuistically, to tin line with the pressures/social unrest, in purpose to minimize and reduce the impacts of their institutional vulnerabilities. As Mendes (2017) highlights:

"The resumption of the initiative by the State has materialised in a series of legislative initiatives, the constitution of commissions and mission units, (…) that emphasize the ad-hoc and unstructured character of the presence of the State, always within the logic of its perpetuation and (its) regulatory role".

Two of those initiatives were the creation of the Independent Technical Commission (CTI) and the Council for the Compensation of Fire Victims (CIVI). The former with competences to promoting an assessment of the fires, and also to proposing recommendations for change and improvement in the civil protection and defence systems against forest fires, and the latter with the aim of defining the minimum values to be paid to the victims, and their relatives, as compensations. The consequences were also felt within intergovernmental relations, which contribute to explain some of the main vulnerabilities of the national civil protection system.

Portugal is characterised by presenting high regional asymmetries which are reflected in an unbalanced development of the country. An analysis centred on the genealogy of fires cannot neglect these processes and their consequences. It is in this context that we can interpret the public policies of risk governance, identifying actions and omissions which contribute for not betting or implementing development projects in certain regions, translating into failures in territorial planning with the consequences of abandonment and, therefore, the increase in risk of forest and rural fires.

Despite the diagnoses, strategies and plans that, reactively, always arise to (short)cut through the problems identified, the reality is that this set of intentions seldom finds correspondence with the realisation of the measures advocated.

For example, it should be noted that, after the 2003 forest fires, where about 426 000 hectares were burnt and up to 20 fatalities were registered, the Ministry of Internal Affairs (MAI) produced a *White Paper of Forest Fires* (MAI, 2003). In this document, it is mentioned the importance of not repeating similar situations, for which the government would develop a set of actions to avoid them. The results achieved were not the intended ones. Similar events occurred two years later, in 2005, having caused 17 fatalities and destroyed about 340,000 hectares. Once again, these events came to be the source of new legislative reforms, introduced both in the civil protection and defence systems against forest fires.

It is approved in 2016, by Resolution 65/2006, the National Forest Fire Defence Plan (PNDFCI). This diploma defined the strategy and guidance of public policies towards forest land. In the same year, Decree-Law (DL) 124/2006 of 28 June defined the roles, both in relation to structural prevention and to the competencies and responsibilities for action.

This legislative sequence will promote a first amendment to DL 124/2006, with the publication of DL 17/2009, of 14 January, where it is referred:

"The obligation for municipalities to have a Municipal Forest Fire Defence Plan (PMDFCI), defining (...) their criteria, and reinforcing the importance of the Municipal Forest Fire Defence Commissions (CMDFCI) constitution, in all the country's municipalities" (Ribeiro, 2018, p. 273).

It was added in article 10 (4) of the same diploma, *"The elaboration, implementation and updating of the PMDFCI is mandatory, and the municipal council should devote its implementation in the context of the annual activity report"*, and in paragraph 7 of the same article, *"(...) shall only be entitled to subsidies or benefits provided by the State the municipalities that have PMDFCI approved*".

The directive and hierarchy logic is evidence in intergovernmental relations. DL 124/2006 confirms that assignments, competencies and responsibilities are located at the level of the central government entities and services. One example is the impositions of the methodologies to be followed upon the elaboration of these instruments, not distinguishing between rural and urban municipalities, with results that, naturally, distort the reality. The change produced with DL 17/2009 is also mandatory to local administrations. They should have PMDFCI and CMDFCI, with the caveat that, without these instruments, there will be no subsidies or benefits from the State.

In short, two problems emerge here: some municipalities simply fail to comply with central determinations; others, despite complying, they do it as a formal obligation and not as a preventive practise of risk management. Because of that, they didn't produce any kind of effect or the results fell short of expectations.

Analytically, a twofold dimension problem arises in intergovernmental relations, as one of the explanatory factors of the social and institutional causes of forest fires.

On the one hand, within central government, a prescriptive attitude, strongly hierarchical and vertically regulatory, of the guidelines and measures to be implemented by the local levels, to which there is imposition of penalties, in case of non-compliance. In centralist logic, two readings should be had: one, the assumption manifested that their obligations and responsibilities were resolved with the legislation; other, the latent confirmation that civil protection is not a fundamental area of government activity.

On the other hand, and with regard to local authorities, there are also several implications, which help to explain these behaviours:

a. Firstly, a lack of political culture that depicts some local leaders. Responsible for the management of their territories in emergency situations, they would have a structure to deal with these disasters. The local level is the first answer to emergency situations. However, some perceptions still consider forest fires with low probabilities, not justifying the organisation of a local system of safety and, in some cases, they don't have any dispositive;

b. Secondly, the consideration that investing in prevention and emergency response seems to divert resources that would be more useful in other types of interventions, that have a more emblematic and visible nature to the municipality;

c. A third explanation can be found in the deficit of pressure that the populations and communities themselves exert before the institutional powers, in relation to safety issues. These pressures, as studied, only emerge when citizens are, directly or indirectly, affected on their safety;

d. Finally, a principle that is strongly rooted in social perceptions and representations, in which it is considered, as constitutionally defined, that the citizens safety is a competence of the State, bridging the shortcomings of other governmental levels.

The analyses of intergovernmental relations within political and institutional domains is, thus, an important contribute to the explanation of social causalities of forest fires. The main discussion here concerns about the role of the two levels of administration, central e local. In Portugal, this hierarchical model of risk governance accentuates the presence of a prescriptive regulation, where local levels are considered as regulatory agents and not as regulatory administrators.

Centred on the involvement and participation of the populations, the fires of 2017 also demonstrate the change of existing paradigms in the relationship between civil society and State.

As Mendes (2017) refers in an opinion article, in an allusion to what he defines as "*institutional accountability and standardization of deviation*",

"Extreme situations reveal how institutions work and they should be analysed as indicators of the type of state, social contract and existing civil society, and the ability to mobilise people, social groups and communities".

The response of civil society is unequivocal here, assuming an active role in much of the subsequent post-catastrophe processes. Concerning the disaster of June 2017, the Association of the Fire Victims of Pedrógão Grande (AVIPG) was created, and it was constituted as a stakeholder in the negotiation with the State about the subsequent policies for the affected victims and burnt areas. This assumption, close to the right to have rights principle, is understood as a requirement of an inclusive citizenship exercised by the populations of the affected areas.

In any case, the State continues/will continue, in a hierarchical logic, to exercise its institutional prerogatives. Thus, and despite the inclusion of an AVIPG element in the aforementioned CIVI, the responsibility of fixing the final value of compensation lies only with the Ombudsman, without including the AVIPG. According to Mendes (2017), "*placing the final decision on distant entities of the victims (…) and their families*, ends up being a wasted opportunity for *"the State and civil society to constitute, outside of a logic of acting Ad hoc and case-by-case, conventional and institutional mechanisms to meet the victims of extreme events or disasters".*

The unequivocal translation into/as to risk governance processes, in its political and citizenship assertions, finds explanatory translation in Mendes (2017), when he states that,

"The biggest consequence of the major fires of June and October in Portugal was the confirmation of all its vulnerability before extreme events, in a country guided by bureaucratic logics of planning and civil protection, and fully based on the projections of experts and without direct participation of interested parties".

4. Seismic risk: perceptions and social representations in risk governance

The interpretations around the seismic risk, characterised by their alienation to metaphysical, natural or unknown territories, which generally reflect an exemption of responsibilities in implementing public policies of prevention and social organization. Understood as unavoidable and uncontrollable fatalities, they also explain the few attitudes and behaviours claimed to the State by civil society. However, these processes have recorded significant changes, and there are new references that acknowledge the transformation in these perceptions and representations, among certain social protagonists, namely technicians and researchers from various scientific areas.

In this respect, one of the discussions that has been most felt is related to the rehabilitation processes of buildings in Lisbon, and in other Portuguese cities, emphasizing the risks associated with these operations, by the circumstance that the law does not oblige the structural reinforcement of seismic resistance in the existing buildings. Inextricably linked to one of the most striking disasters in universal history, the 1755 Earthquake, Lisbon is located in a region of moderate seismic hazard, being expected to be affected sooner or later by the consequences of an analogous event. Thus, the importance of taking into account and reducing the buildings seismic vulnerability of the buildings is a subject area of paramount attention, making the difference between the eventual decrease, or increase, of the number of victims by the occurrence of an earthquake.

The city of Lisbon, as well as Portugal, has been a very sought-after tourist destination in recent years. A significant number of tourists have been acquiring buildings or apartments in the city for their habitation. Therefore, a huge increase in rehabilitation works were registered, namely in degraded buildings without seismic resistance.

To address this increase in rehabilitative interventions, the State legislated, exceptionally, on the subject, having published DL 53/2014 on April 8, with the aim of facilitating and simplifying the constructive processes. This diploma regulates the urban rehabilitation sector. Article 9 points out that "*interventions in existing buildings may not diminish the safety and health conditions of the building or the structural and seismic safety of the construction*".

However, although it is said that it is not allowed to diminish safety conditions, much of the intervention is done in ancient buildings, which, in their original construction, never contemplated seismic resistance measures. A lot of buildings are from the '30s, '40s and '50s, marked by the absence of mandatory seismic resistance legislation. Because of that, and with the contribution of other factors, namely the introduction of dissonant elements and the bastardization of the buildings themselves, all contribute to the increase on the physical vulnerabilities of the building stock.

This problem manifests itself in risk governance processes. In intergovernmental relations, it is noted a divided attribution of responsibilities, with a greater burden on central government given its national responsibility legislative. The municipality critics the government but, at the same time, takes advantage of this legislation so as not to inspect, in loco, the rehabilitation works. Thus, it allows restoring many degraded buildings, although this restoration is mainly at the level of the facades, not considering the essence of its seismic resistance, with the subsequent safety issues.

This lack of harmony, as mentioned regarding forest fires, has a reading in the type of existing governance model. Once again, the hierarchical and vertical modelling of the regulatory mechanisms is present and, while recognizing in its official narratives the importance of its change, the situation is dragging without any modification.

In an article published in the newspaper "*Diário de Notícias*" of January 5, 2017, it was attributed to the Secretary of State for the Environment that "*The Government wants to review the legislation of urban rehabilitation to compel the rehabilitation of buildings to be preceded by evaluations to their seismic resistance (...)* ". As it turns out, after more than a year, the situation remains the same without any evolution, accentuating

the existing risks as an effect of interventions only carried out in facade works, without structural consistency. As known, the earthquakes are not foreseeable.

In the field of an active citizenship, there are two types of consequences and effects. On the one hand, and reflecting a more participatory attitude, it is, above all, in the field of technical and scientific stakeholders, empowered as specialists to take a position about risk and safety, but not always or rarely, having the indispensable capacity to pressure the State to reformulate its action. Once again, the constitutional principle, that it is a State responsibility to ensure public safety, must be present.

On the other hand, the parameters defined by Somers (2008) related to the concept of market fundamentalism are found in a more passive manner. In the absence of control and monitoring by the State, both at local and central levels, it remains up to the citizens to acquire their security and pay it in terms of markets.

5. Final remark

The analytical evidence of risk governance models constitutes an important aid for the explanation of the regulatory factors mechanisms between State and civil society, both in the field of intergovernmental relations, between central and local administration central, and in the processes of involvement and public participation of citizenship.

The confrontation with public policies finds relevance during extreme disasters that affect territories and populations. This evidence is demonstrated by the comparative exposure between the processes arising from forest fires and those resulting from representations and perceptions of seismic risk. In relation to the former, there is a reaction by the State in the resumption of its regulatory logic but including concessions as an effect of public and media pressures. In the case of seismic risk, both due to the effect of depersonalization of this hazard and to its impersonal symbology, it can be found to be non-integrated given its non-problematic status in the immediate risk governance options.

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