



# Compliance Degree with the Right of Opposition in Portuguese Municipalities in a COVID-19 Pandemic Period: The particular case of the CIM municipalities of Alto Tâmega

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## Abstract

The Statute governing the Right of Opposition was approved by Law No. 24/98 of May 26, 1998. The "Right of opposition," which states that "Minorities shall be ensured the right to constitute and engage in a democratic opposition to the Government and to the executive bodies of the Autonomous Regions and of local authorities of a representative nature, as laid down by the Constitution or the law" shall be applied as a general law of the Portuguese Republic, according to articles 114, 161, subparagraph c), 164, subparagraph h), and 166, paragraph 3, and article 112, no. 5 of the Constitution. Alongside our investigation, the data obtained reveal that the municipalities of the CIM-AT must assume a more proactive stance that fulfils and enforces, in all its dimensions, the provisions of the Constitution of the Portuguese Republic CRP, and the legal provisions of the Statute of Right of Opposition that certify their right of opposition. This issue raises doubts about the importance of the Statute of Right of Opposition by the opponents, as there are weaknesses in its municipal impact, in view of the interest for democracy, seeming to be seen more as a matter of legal imposition than an instrument with formative and development dimensions. Such a change will be necessary, as according to Almeida & Sousa.

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## 1. Literature Review

The world as we knew it was altered by the new coronavirus. So, it completely turned our life upside down. Everything was abruptly and drastically altered, from social gatherings to business meetings to the most routine daily activities, and the majority of us didn't appreciate the disruption, the speed of the unexpected, the instability of the present, or the uncertainty of the future.

After a week, on January 7, 2020, Chinese authorities confirmed that they had identified a new type of coronavirus. From then on, the WHO began to work together with the Chinese authorities and the best specialists worldwide in order to better understand the virus, trying to understand how it behaved and affected sick people, what was the appropriate treatment and, finally, what measures could countries take to mitigate its spread. No less important than the desperate search for a vaccine to stop Covid-19 was the political response, with urgent measures being taken that tried to stop the fulminant spread of the virus. To this double scientific and political uncertainty, two other circumstances are added. One is the urgency of health measures capable of producing immediate effects, often not being possible to give the political decision the time it requires. The other is the need to understand the extent to which political processes related to SARS-CoV-2 challenge the usual theoretical frameworks for emergency analysis, scheduling, formulation, implementation and evaluation of public policies (Correia, 2020, p. 3). In Portugal, contamination by SARS-CoV-2 officially began on March 2, 2020, lack of knowledge and expectations led to some inertia in anticipating the formulation of appropriate policies with the aim of mitigating the effects of the pandemic. The main national authorities joined together in a concerted effort to make urgent decisions. President of the Republic, Government and Local Authorities and respective oppositions streamline processes to facilitate response to the pandemic. But was there any lack of strength on the part of the opposition in the face of the urgency caused by the pandemic due to the imperative nature of political consensus that is required? Did they have a "vote on the matter"? In the specific case of this article, we are particularly interested in assessing whether the Statute of the Right to Opposition at the level of Local Authorities has been complied with, taking into account the rights affected and restrictions imposed by successive states of emergency, calamity, alert or contingency.

### *The theoretical framework of the right of opposition*

The opposition is an expression of pluralism, without which a State lacks authentic democratic legitimacy. Democracy, in turn, is instrumentalized in the dynamic conjugation between the majority and minority (Emerique, 2007, p. 13). As the author also mentions, the opposition is different from political contestation. Contestation serves as a classification for all manifestations of agitation and more radical criticism of established institutions and values, when not expressed through opposition channels. The contestatory attitude may predate the systematic organization of the opposition (*idem*, p. 14), which should express a "controversy inherent to the process of forming political will and adopting decisions and acting in a manner consistent with respect and acceptance". of the consensual rules of the political game. Opposition can be understood as the set of political decision-making bodies and the forces that, within the scope of the constitutional State, inside or outside Parliament, oppose each other ("all'indirizzo politico della maggioranza") (*idem, ibidem*). The opposition has acquired importance, especially in

democracies based on the principle of political pluralism and whose political process has been structured through party organization. Lilian Balmant Emerique (2007, pp. 15-16) presents the following functions of the opposition: i) supervision; ii) political alternation; and, iii) contradiction. As Simone Wegmann (2020) points out in her article “Policy-making power of opposition players: a comparative institutional perspective”, a crucial characteristic of democracies is the fact that despite ensuring equal access to electoral participation, those electoral results produce inequalities among citizens. The author also mentions that in a democracy it is not just about winning elections, but also losing them and, in this sense, there are fewer studies with contributions in this second aspect. As a way of overcoming this weakness, several actors present a series of research in the literature in order to evaluate and explain the power and/or formal rights of the oppositions, that is, those who lost the elections. It is also evident what Strøm (*idem*, 2020, p.1) points out, about the power of oppositions, internal parliamentary structures, and procedures results in a differential of political influence, that is, a greater differential of political influence indicates more power of the government party compared to the opposition, and that influence differential can manifest itself in two different aspects: more opposition rights or fewer government rights. Thus, such rights define the political influence differential in the sense that they determine how much action the government and opposition actors can take. Few opportunities for action and/or inclusion in the decision-making process indicate exclusionary parliamentary procedures (from the opposition's point of view). On the contrary, many of these opportunities for the opposition point to inclusive parliamentary procedures that mean more power for opposition actors (*idem, ibidem*). Thus, the opposition's policy-making power refers to the “ability to verify the action of the majority within legislatures” (Carey, 2006, p. 433, *apud* Simone Wegmann, 2020, p.1).

In addition to the literature on the different types of opposition and the different characteristics for distinguishing and analysing them, most existing studies on opposition focus on relatively few cases, see, for example, the references by Wegmann, 2020, p. 2, where it refers: “Andeweg *et al.*, 2008; Church & Vatter, 2009; Christiansen & Damgaard, 2008; Gel'man, 2005; Helms, 2004; Inoguchi, 2008; Kaiser, 2008; Kopecky & Spirova, 2008; Mujica & Sanchez-Cuenca, 2006; Schrire, 2008) or do not look at political regimes beyond a specific type of democracy. Studies focus on both parliamentary democracies (see, for example, Garritzmann, 2017; Schnapp & Harfst, 2005; Sieberer, 2011) and presidential ones (see, for example, Morgenstern *et al.*, 2008). Furthermore, most contributions to research on oppositions focus on the characteristics of oppositions, how they are organized or how they behave. Only rarely does the literature address the opposition's specific rights that define its potential influence in the legislative arena.

It is quite evident that the actions and/or behaviour of oppositions find extensive constitutional protection in jurisprudence, but, in practice, it is common for these forms of opposition to vary greatly, both in form and substance (Bulmer, 2021). In this understanding, all democratic systems already have formal legal mechanisms to protect the rights of minorities (political opposition) although with important conceptual differences and different institutional contexts. There is, therefore, a certain widespread understanding that opposition in democratic systems is a factor that should not only be tolerated, but valued as a vital element of the political system (*idem*, 2021). For example, in the Westminster model (*idem, ibidem*, 2021, p. 11) the constitutions, especially those

adopted after the 1950s, largely provide for the “recognition and powers of the leader of the opposition, both inside and outside parliament, because a recognized opposition is a necessary counterbalance to this fusion of powers in the cabinet”. The Westminster model makes 'criticism of the administration as much a part of politics as the administration itself' and that the secret of this recognition of opposition in such constitutions may be the secret of their relative durability (Bagehot 1873, p. 53). In parliamentary systems, especially those of the continental European tradition, characterized by multiple parliamentary parties, for example the notion of a single leader of the opposition may be inappropriate. Instead of an opposition leader, there are leaders of opposition parties, but they do not necessarily have the same status as the Westminster model opposition leader. A political opposition inside and outside parliament is an essential component of a democracy and its proper functioning. One of the main functions of the opposition is to provide a credible political alternative to the ruling majority by providing other policy options for public consideration. By inspecting and criticizing the Government's work, continuously evaluating the Government's action and holding the Government accountable, the opposition works to guarantee the transparency of public decision and efficiency in the management of public affairs, thus guaranteeing the defence of the public interest and avoiding the use misconduct and dysfunction (Parliamentary Assembly, 2008).

The right of opposition will consist in the possibility of forming and exercising an opposition as an essential element of the fundamental liberal democratic order, and that contributes to form the inviolable and intangible nucleus of the state structure (Emerique, 2007, p. 20). The right to opposition, on the other hand, will mean the general freedom of founding and opposition activity of a group, resulting in the object of protection within the scope of classical fundamental rights, especially freedom of expression of thought, freedom of assembly and association, and the right of petition. Democratic equality requires that the majority in power and the minority in opposition come to reserve fundamentally the same opportunity in the campaign for the aggregation of electoral consensus (*idem*, 2007, p. 20).

The Portuguese legal system, and in particular the Constitutional Court, despite being rarely asked to rule on these issues, goes even further in the spectrum of holders of the right of opposition (normally affected by political parties or elected representatives) excluding groups of voting citizens from the perimeter of the right of opposition, when it refers “In short, the norm of no. 3 of article 5 of the Statute of the Right of Opposition, approved by Law no. 24/98 of 26 May, interpreted in the sense that only the political parties represented in the municipal assembly and that are not part of the municipal council, or that do not assume portfolios, delegated powers or other forms of direct and immediate responsibility for the exercise of executive functions, have the right to be heard on the proposed budget and plan of activities is unconstitutional, as it unreasonably and unjustifiably restricts the right of democratic opposition of groups of citizens and readers when in the minority in the bodies of local authorities, a right that results from the combined provisions of no. 2 of article 114 and no. 4 of article 239 of the Constitution” (ACTC no. 373/09). More recently, ACTC n.º 171/2020 (published in “Diário da República”, 1st series, May 26, 2021, p. 12.) states that “the right of opposition is a guaranteeing element of the separation between the executive and the legislature based on the classic idea of the legislature as control over the executive, taking into account that

the ownership of political power goes back to a governmental and parliamentary majority and an opposition, normally a minority, with powers of control. The constitution institutionalized the right of opposition, as a counterweight and limit to the power of the majority through an active opposition leading to the possibility of contesting the lines of political direction". Otherwise, we will be facing a subversion of the democratic principle and the right of opposition of minorities (ex vi articles 2.<sup>o</sup> and 114.<sup>o</sup>, n<sup>o</sup> 2, CRP) with clear violation of the rights, freedoms and guarantees of political participation.

### *Evolution of jurisprudence on the right of opposition in Portugal*

The Right of Opposition Statute (hereinafter ROS) in its current version, appears enshrined in Law No. paragraph c), 164.<sup>o</sup>, paragraph h), and 166.<sup>o</sup>, paragraph 3, and article 112.<sup>o</sup>, paragraph 5, of the Constitution of the Portuguese Republic (hereinafter CRP), to be valid as general law of Republic, right in its article 1.<sup>o</sup> — Right of opposition, that "minorities are guaranteed the right to form and exercise a democratic opposition to the Government and to the executive bodies of the Autonomous Regions and local authorities of a representative nature, under the terms of the Constitution and the law" (art.<sup>o</sup> 1.<sup>o</sup> ROS). As a result, the ROS came within the scope of the political and legislative competence of the Assembly of the Republic (article 161 of the CRP), namely paragraph c) of the same article, which refers to the competence of the Assembly of the Republic (hereinafter AR) " make laws on all matters, except for those reserved by the Constitution to the Government" and, also, within the scope of its absolute reserve of legislative competence (paragraph h, of article 164 of the CRP) and in the form of law (no 3 of article 166 of the CRP).

However, it is essentially from article 114 of the CRP (Political parties and right of opposition) from which the ROS derives, and from which the recognition of minorities the right of democratic opposition is extracted. It is noteworthy, despite what is mentioned above, that ROS had already been approved in 1977, by Law n. <sup>o</sup> 59/77, of August 5, of the AR, "Diário da República" n. <sup>o</sup> 180/1977, Series I of 1977 -08-05. In this regard, compare the similarities and dissimilarities in the two versions of the ROS in table 1, pg.11.

It is worth emphasizing, from the outset, to note that the right of opposition, which is the object of study here, should not be confused, within the scope of other enshrined rights that are very close, such as, for example, the principle of open administration or the right to procedural information (ATCAS, 2017), etc... which are beyond the scope of this study since it is not a matter of investigating the protection of interests and the legal-subjective positions of those interested in a given procedure or publicity and transparency of administrative activity, not even the right to information or other matters relating to the right to information and the right to oppose, enshrined in article 61 of the Code of Administrative Procedure (hereinafter CPA) (CPA, 2015, 2020) and article 5 of Law no. 26/2016, of August 22, Law on Access to Administrative Documents, which enshrines the Regime for access to administrative and environmental information and the reuse of administrative documents (hereinafter RGPD) or even the new General Protection Regulation (hereinafter GDPR) (GDPR, 2016).

In our legal system, therefore, "the principles of open administration, free access to files and documents of the Public Administration, administrative transparency, participation, collaboration (among others)" (CCDR, n.d. p. 5) are in force. but it is the right to

opposition, in particular, that the object of study of this dissertation deals with, although it can be added that this right (of opposition) may be connected with the principle of open administration which, as stated in the doctrine “intends to combat the principle of *arcana praxis* or the principle of secrecy, characteristic of the Police State, and aims to democratize public life, replacing or overcoming authoritarian administration by a participative administration, and, even more, to make the global functioning of power more transparent, and, to that extent, provide it with legitimacy and legitimacy” (*idem*).

Established as the right of democratic opposition through the constitutional and ordinary legislation already mentioned, Jorge Miranda and Rui Medeiros (*idem, ibidem*, p. 23) refer that: (a) political democracy implies the recognition of the right of opposition as an activity of criticism, inspection and creation of alternatives; and, (b) there is a general right of opposition and rights, or rather specific powers attributed to minorities with seats in political assemblies.

On the other hand, as taught by Gomes Canotilho and Vital Moreira, minorities are recognized as having the right of democratic opposition, as a realization of other principles and fundamental rights of the CRP, adding that the right of opposition is not limited to the «parliamentary opposition» and also cover the right to “extra-parliamentary opposition”. Furthermore, the right of opposition exists not only at the level of the Government bodies of the Republic, but also at the level of the government bodies of the autonomous regions and local authorities. In conclusion, refer the authors, “the constitutional recognition of a right of democratic opposition means the institutionalization of the opposition, with the consequent attribution of a constitutional function. (...) basically, the guarantee of the rights and powers of minorities is a constitutional instrument of counterweight and limit of the power of the majority (...)” (CCDR, n.d. p. 23).

However, the “dedication of this right at municipal level only materialized over the course of three decades”, namely with the extension of the right of opposition to municipalities with the update of the CRP of 1989 and only later “with the approval of law n.º 24/98, of May 26 (...) in a context of modernization of local power” (Almeida & Sousa, 2019, p. 509).

It should be emphasized that the opposition does not have the task of opposing a Government to “conquer power”, on the contrary, it also exercises a function of representing the interests and aspirations of the “losers” of the electoral game. That is, “political opposition is one of the fundamental components of any liberal-constitutional democracy” (Almeida & Sousa, 2019, p. 505). On the other hand, and according to Leitão (1987), the right of opposition “recognized to minorities (...), under the terms of the Constitution» (...) cannot be evaluated in a way that is neither more nor less demanding, neither more nor less important than the consecration of the political opposition as a true institution (...)” (*idem*, pp. 20-21).

However, the relationship between the Government and the opposition is not always pleasant, in which, according to the authors cited above, this fact is due to the fact that “the institutional design of democratic local power instituted on April 25, 1974, sought to certify a constancy between governability and pluralism, and in practice pluralism “was relegated to the background” (*idem, ibidem*, p. 506).

In this way, there is not always democratic harmony between the Government and the opposition “given the asymmetries of power, chronicles and conjunctures between political forces and the very formatting of democratic institutions” (p. 508). Although, in a democratic context, it is not the duty of the political system to attribute to the opposition “rights and responsibilities within the constitutional framework” (Almeida & Sousa, 2019, p. 507).

After 1945, during the Estado Novo period, the concept of opposition is adjusted “in the corporatist model in an organicist way (...) as a formal instance tolerated by the instituted power and not as an independent, alternative and confrontational social and political reality” (Almeida, 2019, p. 510), that is, it was a model where municipalities resigned themselves to the Government of the nation. During this period, according to Caetano (1937) *apud* Almeida (2019, p.510) “this organicist matrix associated with a logic of authoritarian centralization in which the municipalities were totally subordinated «to the government of the Nation» made the local authority become in an “«empty formula» of power” (Nabais, 1993 *apud* Almeida, 2019, p. 510).

In Portugal, “the admission of the right of opposition, in the post-April 25th, was developed primarily through the Constitution and, later, in a logic of complementarity through ordinary legislation specifically dedicated to this issue (Law no. /77, of August 5th, and No. 24/98, of May 26th)” (*ibidem*, p.511).

It is important, in order to understand all this evolution, to understand how this law n. <sup>o</sup> 59/77, of August 5, emerged through a constitutional revision of 1989, being later revoked by law n. <sup>o</sup> 24/98, of May 26. Thus, in Law No. 59/77, of August 5, the Constitution distinguishes in Article 117, No. 2, the right of democratic opposition, which “would end up bringing about a more in-depth development and harmonious implementation of the constitutional precepts that enshrined the right of opposition (of opposition parties or those related to it) even if only at the level of the Assembly of the Republic and the autonomous regions” (Almeida, 2019, p. 512). In other words, according to Law n. <sup>o</sup> 59/77, of August 5, “the specific political rights which translate into the right of democratic opposition must be reserved, under the terms of the Constitution itself, to political parties with parliamentary expression, without prejudice to the general right of opposition recognized to parties not represented in the Assembly of the Republic”.

The main reason for the appearance of this regulation is related to three reasons, firstly due to the fact that “the democratic regime is taking its first steps, experiencing a certain political-party tension”, also “the fact that it was the CDS to present this Bill is a fact that has a symbolic nature and that is inseparable from the affirmation of this party, in the post-April 25th period and, finally, the fact that never in the discussion of this diploma (...) this legal status of the opposition include opposition parties within the framework of local authority bodies” (*ibidem*, p. 512). In this understanding, the extension of the right of opposition to the level of municipal bodies only manifested itself with the constitutional reassessment of 1989 that added to the current article 114.<sup>o</sup>/3 of the Constitution of the Portuguese Republic. In table 1 below, characteristics are highlighted that continued, or not, to be contemplated in Law n. <sup>o</sup> 59/77, of August 5th, and Law n. <sup>o</sup> 24/98, of May 26th, having verified meaningful introductions to content approved by the latter.

Since, as already mentioned, the object of study focuses on the analysis of the ROS, with particular emphasis on Portuguese municipalities (with a study in the Intermunicipal Community of Alto Tâmega, henceforth CIM-AT), it should be noted that more will be given emphasis on the right of opposition of minorities, as a right that includes the rights, powers and prerogatives provided for in the Constitution and in the law, within the ambit of local municipal authorities (local authorities, parishes are excluded from the study), their ownership recognized to political parties and to groups of citizen voters represented in the deliberative bodies of local authorities (municipalities), who are not represented in the corresponding executive body, and to political parties and groups of citizen voters who are represented in municipal councils, provided that none of their representatives assume portfolios, delegated powers or other forms of direct and immediate responsibility for the exercise of executive functions.

Jorge Miranda and Rui Medeiros defend (Annotated Portuguese Constitution, p. 294, *apud* CCDRN, s.d. p. 26) that powers identical to those attributed by the Constitution to minorities in the Assembly of the Republic should be attributed to minorities in regional Legislative Assemblies and *mutatis mutandis* some also to minorities in the assemblies of local authorities “understanding that they also cover the groups of citizens represented therein”. One of the rights of opposition (specific powers attributed to minorities, in the words of these authors in the Annotated Portuguese Constitution, p. 292), provided for in the Statute of the Right of Opposition, approved by Law n.º 24/98, is that of prior consultation (article 5) which consists, with regard to local authorities, in the right to be heard on the proposed budget and plan of activities (n.º 3).

According to Dahl (1965), “*to one who believes in the essential worth of a democratic polity, how much opposition is desirable, and what kinds? What is the best balance between consensus and dissent*” (p.7), that is, for someone who believes in the essential value of democratic politics, how much opposition is desirable, and what types? What is the best balance between consensus and dissent? According to the same author, even among democrats there is not much agreement on the answers to these questions.

According to the same author, “*no single curve could summarize the historical changes in the power of various parliaments. But in a number of countries two kinds of developments have helped to increase the relative importance of other sites. One is a pronounced growth in many Western democracies in the power of a plebiscitary executive who acquires great political resources by winning a national election*” (p.17).

While this development is clearest in the United States and the French Fifth Republic, the rise of highly disciplined parties has led down a different route to similar results in Britain, Norway, Sweden and Austria. In contrast, in France and the United States the constitution, laws, and political practices assign extensive authoritarian power and authority to an elected chief executive. However, in other countries, if a party or coalition wins a majority in parliament, the party guarantees that it will form a government whose policies cannot, for all practical purposes, be defeated by opponents in parliament. Concluding: “although the development is highly uneven and the pattern is markedly different from one country to another, the importance of the legislature as a site for encounters between opposition and government is reduced to the extent that a plebiscitary executive (whether president



or cabinet) has acquired the power to make key decisions without much restraint by parliament” (Dahl, 1965, p.17)

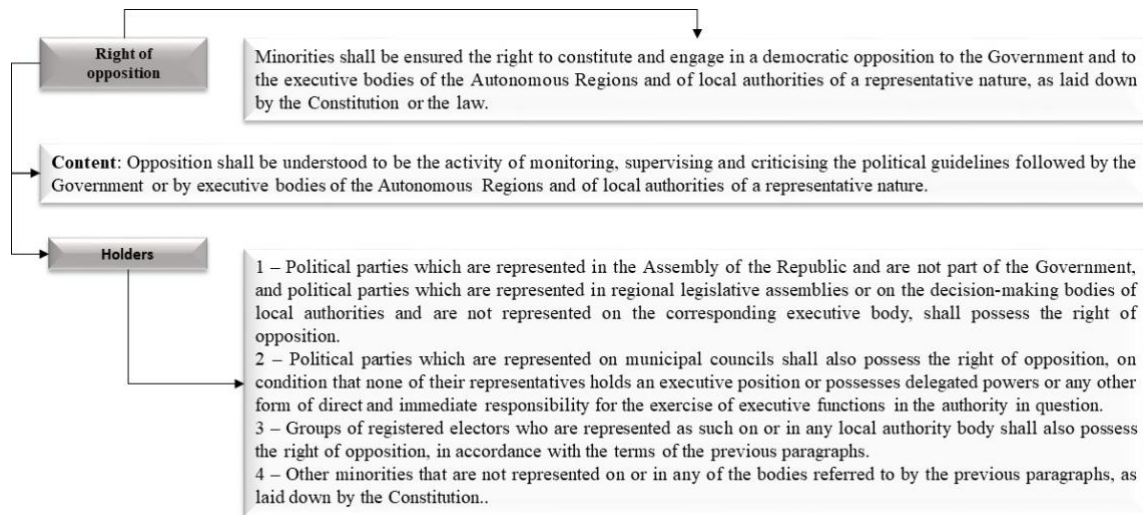
*Densification, scope of concept content*

It follows from the reading of number 1 of article 2 of Law number 24/98, of May 26, of the ROS, that the concept of opposition should be understood as “the activity of monitoring, monitoring and criticizing political guidelines of the Government or the executive bodies of the Autonomous Regions and local authorities of a representative nature” and that the right of opposition will integrate the rights, powers and prerogatives provided for in the CRP and in the Law, adding in paragraph 3 of the same article that political parties represented in the Assembly of the Republic, in the regional legislative assemblies or in any other assemblies designated by direct election in relation to the executive correspondents of which they are not part, they also exercise their right of opposition through the rights, powers and prerogatives granted by the Constitution, by the Law or by the respective internal regulations to its deputies and representations.

*The operationalization of the right of opposition in law n<sup>o</sup> 24/98, of May 26: holders of the right of opposition*

In Almeida perspective (2021) the holders (*cf.* fig. 1) of the right of opposition include “political parties and groups of voting citizens, which are only represented in the municipal assembly or which, being also represented in the municipal councils, there do not assume any responsibilities” (p. 17). However, by Law n.º 24/98, of May 26, under the terms of article 3 of that Statute, the following are entitled to oppose: a) political parties represented in the Assembly of the Republic (which do not form part of the Government), parties politicians represented in regional legislative assemblies and in deliberative bodies of local authorities (who are not represented in the corresponding executive body); b) political parties represented in municipal councils, provided that none of their representatives assume portfolios, delegated powers or other forms of direct and immediate responsibility for the exercise of executive functions”, c) group of voting citizens who are represented in any municipal body and, for Finally, political parties or other minorities without representation in any of the bodies referred to in the previous numbers.

It is important to emphasize that the holders of the right of opposition “are not only the political parties represented in local bodies (...), they are also, under the same conditions, groups of voting citizens” (Almeida & Sousa, 2019, p. 516). The author also reinforces that, “in one of the few cases in which the Constitutional Court ruled on the right of opposition, it considered that there are no reasons to justify such discrimination against groups of voting citizens against political parties” (Almeida, 2021, p. 18).



**Figure 1: Statute of Right of opposition - Content and holders**

Thus, the Legal Regime of Local Authorities also regulates the powers of municipal bodies, with regard to the application of the Statute of the Right of Opposition, in the following manner (CCDRN, n.d. p. 27): — In Municipalities: — Article 33(1) (yy) determines what is incumbent upon the municipal council to comply with the Statute on the Right of Opposition; — Article 35(u) of the same diploma establishes that it is incumbent upon the mayor to promote compliance with the Statute on the Right to Opposition and the publication of the respective assessment report; — Article 25(2)(h) stipulates that it is incumbent upon the municipal assembly to discuss, following a request from any of the holders of the right of opposition, the report referred to in the Statute of the Right of Opposition.

#### *Rights establish in the right of opposition statute*

The Statute governing the Right of Opposition grants its holders (*cfr.* fig. 2 below) the right to information (article 4), the right to prior consultation (article 5), the right to participate (article 6), the right of legislative participation (article<sup>o</sup> 7) which is not relevant in our study due to the fact that we study only local municipal authorities that do not have legislative attributions and competences, and the right to testify (article 8).

However, it should be noted that, despite these rights being conferred, there are “practical problematic issues that have arisen in relation to each of them” (Almeida & Sousa, 2019, p. 516).



**Figure 2: Rights in the Opposition Right Statute**

## 2. The impact of COVID-19 on local democracy in a pandemic context

COVID-19 caused, and continues to cause, a major impact on the world, whether at a social, economic, cultural and political level. At the political level, this impact brought unexpected consequences. This impact, due to the restrictions caused by COVID-19, had repercussions both on the functioning of local democracy and on participatory democracy (Pereira, 2021).

However, according to Almeida, Sousa & Ramos (2021), “these consequences were not exponentially greater only because there is Local Power”, that is, through “municipalities, parishes and, in partnership with the IPSS, it was the social economy who gave a prompt and immediate response” (p. 7). According to a survey carried out among the 308 Presidents of Municipal Assembly, an attempt was made to understand “some of the effects that the restrictive measures imposed during the first general confinement had on the functioning of municipal bodies at the municipal level” (Sousa, Costa & Grilo, 2021, p. 19). According to Almeida (2021), “the right of opposition and all the rights that compose it, (...) were not suspended or limited by the pandemic crisis, remaining fully in force in the municipalities”, however, in order to respond to problems complexes to which the pandemic context has forced us, “several exceptional measures have been adopted by city councils” (p. 38). Since, in order to respond to such problems arising from COVID-19, a “dialogue posture” between the political forces of power and the opposition is necessary.

Within these analysis factors mentioned by the authors below, it is important to take into account some points that will also be important and fundamental in the analysis, interpretation and corroboration of the data in the case study of this investigation.

Has the pandemic – COVID 19 – harmed the status of the right of opposition in CIM-AT municipalities? Particularly in calamity and emergency situations, as identified in table 1.

**Table 1: State of Emergency versus Calamity: the differences**

	Emergency state	Calamity Situation
<b>Who declares</b>	President of the Republic	Government or Municipalities, in cases of smaller geographic coverage
<b>Reasons and scope</b>	Cases of public calamity or that threaten national security	Cases of serious accident or even catastrophe that require the adoption of exceptional measures to restore normalcy

	Emergency state	Calamity Situation
<b>Principals Restrictions</b>	Partial suspension of the exercise of rights, freedoms and guarantees	All those that are duly specified in the Civil Protection Basic Law
<b>Field operations</b>	The Armed Forces are on Standby	Civil protection forces lead operations.
<b>Legal framework</b>	Law 44/86, of September 30	Law No. 27 of 2006 of the Civil Protection Basic Law
<b>Legal deadline for revocation</b>	15 days	It does not have. Although it may coincide with the 15 days of the state of emergency

### 3. Methodology and data

The data were collected with the support of a previously elaborated and tested questionnaire survey. It was applied online, designated as a “Questionnaire Survey to holders of opposition rights” in the municipalities under analysis and was prepared with the contributions of the 21 surveys available online from the Association Portuguese Health Economy and that directly and indirectly involved COVID 19. Other inquiries were also followed, and in a way adapted to the holders of the right of opposition, through questionnaires prepared by higher education institutions, Banco de Portugal, etc. involving the social impact of the pandemic.

For a total of 21 councillors surveyed (those who were elected in the two mandates were excluded) from the 6 municipalities of the CIM-AT, 18 valid responses were received (85,7% of the total), distributed as follows: 11 councillors from the PS; 8 councillors from PSD/CDS and 2 Independents.

As for the procedure for applying the survey by questionnaire, it was defined that it would be used only once for the purpose of obtaining responses, a total of 18 responses were obtained and a deadline was established after which no more would be accepted. questionnaires for data analysis purposes (June 02, 2022). It consists of 29 closed questions. The answers present in this questionnaire assume the nominal and ordinal form. The questionnaire is organized into questions corresponding to the socio-demographic data of the respondent and relating to the pandemic situation and the right of opposition in the Intermunicipal Community of Alto Tâmega (CIM-AT) which is a grouping of municipalities, consisting of six municipalities: Boticas, Chaves, Montalegre, Ribeira de Pena, Valpaços and Vila Pouca de Aguiar in periods corresponding to the various states of emergency, alert, calamity, and contingency.

### 4. Discussion

In the investigation, through the application of the respective questionnaire survey to the opposition (Political parties which are represented on municipal councils) of the six municipalities that incorporate the respective opposition executives, we set out to understand how the entire pandemic context has harmed the Statute of the Right to Opposition in the municipalities under analysis, namely because the sessions and meetings of the municipal executive bodies underwent changes in form, and even their absence was verified. Focusing on issues directly related to the pandemic and which are

part of our questionnaire survey, we found that when asked “*What position do you hold in the municipality?*” 88,9% of respondents claim to be on a non-permanent basis and without any claims to be on a non-permanent basis and without any functional position or without any other type of responsibility assumed. In view of the pandemic situation experienced, many restrictions were imposed to contain the spread of the virus. The data analysed below were intended to assess the opinion of the respondents regarding the measures applied and the states enacted. According to the results obtained, 88,9% of respondents consider that the restrictions were necessary and adequate, on the contrary 5,6% have an unfavourable opinion of the declared state and likewise, 5,6% consider that more restrictions are necessary.

Regarding the question “*To what extent has it been easy or difficult for you to deal with the current restrictions?*”, most respondents, 72,2%, assume that it was relatively easy. It should be noted that 50% of respondents worked in what was the period marked as being the “easiest”, that is, those elected for the 2021/2025 term. On the other hand, 22,2% said it was relatively difficult and 5,6% said it was very easy.

The entire pandemic period has been marked by uncertainty and fear, in which all countries have adapted to the new conditions, in what is the new reality. When asked about “*until when do you feel prepared to live under the restrictions?*”, 33,3% of respondents assume indifference, not knowing how to answer the question. About 16,7% assume they are prepared to live under restrictions “until the end of the year” and 27,8% for a year or more. However, the 22,2% respondents stand out who, although in small numbers, assumed they had never been prepared to live such a reality. With regard to the *functioning of the bodies and the support received*, taking into account that mandatory confinement was established for infected citizens, namely the civic duty of home confinement, as well as the adoption of the teleworking regime and closure of various facilities and establishments.

When questioned about the *conditions to carry out their functions in a telework regime*, the respondents considered that they had adequate conditions, with around 61%. On the contrary, the answer is no longer the same when asked whether, *in terms of equipment* (computers, internet) and space, the municipality provided or was concerned about doing so, as 72,2% of the respondents said that the municipality did not showed concern with the operationalization of the exercise of the positions. Reflecting on these results, the municipalities' adaptability capacity and the obligation to ensure working conditions are questioned, not only for their workers, but also for the members of the executive body.

In this follow-up, the respondents were questioned about the *functioning of the municipal body* in question, in order to assess the present technical limitations and the impact on the observance of the legally established. Despite some dispersion in the results, the mixed regime stood out with 61,2% of the respondents, followed by the face-to-face regime, with 27,8% of respondents, and finally only 11,1% reported that the sessions took place only by videoconference. It was considered, therefore, that the formal constraints that were imposed as a result of the pandemic influenced the performance of the political opposition in terms of the functioning of sessions and meetings of the deliberative and executive body.

Finally, and regarding the exercise of the *Right of Opposition*, although these are conferred, there are “practical problematic issues that have arisen in relation to each of them” (Almeida & Sousa, 2019, p. 516). As Almeida points out, there are a series of problematic issues when confronted with this issue of rights and, therefore, comparing the responses of respondents to this issue, it was verified the existence of various gaps.

When asked about “*During a State of Emergency, Calamity and Alert, and within the scope of the Right to Information, do you consider that you have been informed regularly and directly by the executive body about the progress of the main matters of public interest related to your County?*” 50,0% of the respondents stated that “in part” they considered themselves regularly and directly informed by the executive body on the main matters of public interest related to the municipality. 16,7% of respondents had an unfavourable opinion and only 33,3% responded favourably.

Within the scope of the *Right of Prior Consultation*, the vast majority of respondents, 38,9%, stated that they had not been consulted on the main issues, namely in the discussion of proposals for the respective budgets and activity plans. Nevertheless, 27,8% of respondents say they were consulted, and 33,3% said they were consulted, but only in part.

With regard to the issue regarding the *Right to Participate*, most of the councillors, 44,4%, assumed that they had not commented on any issues of local public interest, including the presence and participation in all official acts and activities. In turn, 38,9% stated that they had given their opinion in part, and 16,7% responded favourably to the question, that is, that they were informed of the activities they intended to develop and actively participated in defining these lines of action, outlined by the respective executives.

The *Right to Testify*, in the context of research by CIMAT-AT, raised some questions regarding the answers in the interpolation on the constraints inherent to decreed states. This is because 77,8% of the respondents stated that their right to testify before any committees set up to produce white papers, reports, etc. was not impaired, however, due to the small size of the municipality's organic structure, we deduce that there is no pressing need to resort to this type of instrument. In order to assess whether the term of office of councillor in the opposition, by *Party/coalition/movement*, significantly influenced the perception of the *Right to Information*, *Right to Consultation*, *Right to Participate* and *Right to Testify*, the non-parametric Kruskal-Wallis test was used, followed by multiple comparison, as described in Marôco (2018). The results obtained suggest that there are statistically significant differences in the perception regarding the *Right to Information by mandate* (test Kruskal-Wallis (K-W)= 8,306, significance level ( $\alpha$ )=0,04), but not regarding the *Right of Consultation* (K-W= 5,454,  $\alpha$ =0,141), *Participation Right* (K-W= 2,723,  $\alpha$ =0,436), and *Right to Testify* (K-W= 0,304,  $\alpha$ =0,959)..

According to the multiple comparisons, for a significance level of 5%, statistically significant differences are observed, for a significance level of 5%, regarding the perception of the Right to Information between the PS and the PSD, between the PSD in coalition with another party and the PSD, and between the Citizens' Movement and the PSD, with the opposition PSD councillors being the ones who consider themselves to have been most affected.

Finally, when asked about the *applicability and implementation of the Statute of the Right to Opposition*, the answer was quite clear, because 44,4% said they did not know if reports were prepared and sent to the opposition for them to pronounce, 38,9% says that this practice does not exist, and only 16,7% answered in the affirmative. In this analysis, it was found that there is no concern on the part of the municipalities to specify how the enshrined in the statute is enforced.

Considering the importance of the Right of Opposition Statute and the main stakeholders in it, could the allusion to ignorance be beneficial to those elected? Should it not constitute an obligation, at least its clarification? This situation does not bode well for any party in particular, since, in the investigation we carried out, with the exception of the independent movement called “Movement of Citizens”, all of them have at least one elected member that he claims to be unaware of. If the non-existence of the respective reports is indeed worrying, one cannot fail, likewise, to attribute significant importance to this allusion of lack of knowledge, in order to remove responsibility from those elected. Incidentally, these, as members of the opposition, should be the first to question and demand its correct application and implementation.

## 5. Conclusions

The main objective of this study was to understand whether the Statute of the Right to Opposition regulated by Law 24/98, of May 26, in conjunction with the pandemic restrictions, harmed one of the fundamental rights of democracy, the right to oppose. Namely, because the sessions and meetings of the municipal executive body have undergone significant changes in terms of form, such as the cancellation of meetings and existing ones held through the use of technological means, such as videoconferences.

Initially, it was necessary to understand whether the legal obligation to produce and disseminate reports on the Degree of Observance of the Right of Opposition was being fulfilled, namely in the current context of the pandemic, thus starting an exhaustive research of these reports, in the period in which analysis.

Subsequently, through the preparation of the questionnaire, the perception that each of the opposition councillors had on the subject under study was objectively identified in the six municipalities that make up the CIM-Alto Tâmega. It was thus verified, in a comprehensive manner, that the municipalities of the CIM-AT do not attach great importance either to the legal obligation to prepare reports on the Degree of Observance of the Right of Opposition, much less to its applicability. Faced with this posture, particularly analysing the political characterization of each of the municipalities, it was found that the opposition (which seasonally, sometimes is isolated PSD or in coalition, sometimes is PS) demonstrates that the opposition parties are more focused on political-political struggles parties than actually implementing this crucial instrument that is the Statute of the Right to Oppose. Although the statute objectively designates the holders of the right of opposition, it leads us to conclude that, faced with an opposition without areas of responsibility, mostly on a non-permanent basis, the lack of knowledge of the regular activity in conducting the implementation of policies and decision-making will be a factor preponderant in the discredit of what was instituted in the Law. However, we do not fail



to mention that our investigation focuses on municipalities considered small or medium-sized.

In line with this understanding, it was found that councillors on a non-permanent basis do not feel they are an active part in decision-making, because most do not have a regular seat in the municipality. On the other hand, the role of intervention of those who are full-time without portfolio, but who are not endowed with any decision-making competence, is also questioned.

The statute reflects, as has been reinforced, a series of rights. However, in view of the investigation, the conclusion is clear when asked if they enjoy these rights, since the vast majority of councillors refer to having complete ignorance, being considered only for mandatory issues that do not include active and regular participation in the governance of the County.

Thus, along with the investigation, and according to the data obtained, it was concluded that the municipalities of the CIM-AT must assume a more proactive posture, in complying, in all its dimensions, the provisions of the Constitution of the Portuguese Republic and the legal provisions of the Statute of the Right of Opposition that guarantee their right. This issue raises doubts about the importance of the Statute of Right of Opposition by the opponents, as there are weaknesses in its municipal impact, seeming to be seen more as a matter of legal imposition, than an instrument with training and development dimensions.

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