

A INFLUÊNCIA DURADOURA DO DIREITO PROCESSUAL CIVIL PORTUGUÊS NA CHINA

葡萄牙民事訴訟法在中國的
持續性影響

The lasting influence of Portuguese
civil procedural law in China

Isabel Alexandre*

Professora Associada, Faculdade de Direito, Universidade de Lisboa, Portugal

Resumo: Em 2024 comemorou-se o 25º aniversário do Código de Processo Civil de Macau, elaborado durante a Administração portuguesa de um território chinês que, desde a reunificação de Macau à China, constitui uma Região Administrativa Especial.

Aquele Código, embora adaptado à realidade de Macau – designadamente na consagração do bilinguismo em processo e na conformação do regime da competência à organização judiciária de Macau – e com influência da cultura local – nomeadamente na não importação de novidades legislativas portuguesas – e da chinesa – por exemplo, na ausência de terminologia que sugira a soberania de Macau –, é de matriz cultural portuguesa, adotando os princípios e os traços gerais do regime do Código de Processo Civil português, na versão vigente em Macau em 1999.

O Código sofreu até agora poucas alterações, o que decorre dos

* Researcher at the Centre for Private Law Research (*Centro de Investigação de Direito Privado* – CIDP, at: <https://www.cidp.pt/>).

compromissos assumidos na Declaração Conjunta Luso-Chinesa e do disposto na Lei Básica da RAEM.

As alterações ao Código continuam a manifestar a influência da legislação portuguesa, o que pode dever-se à permanência na estrutura política e na advocacia de Macau de uma pequena comunidade portuguesa, à lecionação do Direito de Macau numa Universidade local e à eventual (e a aprofundar) confluência das culturas portuguesa, chinesa e de Macau em aspetos relevantes para a definição de um modelo processual civil.

Palavras-chave: Código de Processo Civil de Macau; História; Modelo cultural português; estabilidade.

摘要： 2024年是《澳門民事訴訟法典》頒布二十五週年。該法典係於澳門回歸中國前的葡萄牙管治時期制定，而澳門自回歸後即成為中華人民共和國的特別行政區。

該法典雖已因應澳門的實際情況作出調整——尤其體現於訴訟程序中雙語制度的確立，以及管轄權制度與澳門司法組織的銜接——且受到本地文化的影響——特別是未引入葡萄牙的立法新制度——以及中華文化的影響——例如避免使用可能暗示澳門主權歸屬的術語——但其本質上仍屬葡萄牙法律文化體系，採納了1999年在澳門施行的葡萄牙《民事訴訟法典》的基本原則及制度框架。

迄今為止，該法典僅經歷少量修改，此乃源於《中葡聯合聲明》所作出的承諾以及《澳門特別行政區基本法》的相關規定。

歷次法典修訂仍持續體現葡萄牙立法的影響，究其原因，可能在於：澳門政治架構及律師界中仍有小規模的葡萄牙社群存在；澳門法律在本地大學持續講授；以及葡萄牙、中國與澳門三地文化在民事訴訟模式構建的相關層面上可能存在（且有待深化）的交匯融合。

關鍵字： 澳門民事訴訟法典；歷史；葡萄牙文化模式；穩定性

Abstract: 2024 marked the 25th anniversary of Macau's Code of Civil Procedure, drawn up under the Portuguese administration of a Chinese territory which, since Macau's reunification with China, has been a Special Administrative Region.

Although adapted to the reality of Macau (in particular by enshrining bilingualism in proceedings and shaping the rules on jurisdiction to the organisational structure of Macau's courts), and showing the influence of the local culture (for instance, in not importing recent legislative changes in Portugal) and of Chinese culture (for example, in avoiding any terminology that might touch on the sovereignty

of Macau), the code derives from a Portuguese cultural model, and adopts the same principles and general features of the rules established by the Portuguese Code of Civil Procedure, in the version in force in Macau in 1999.

Since then, the Code has undergone few changes, in line with the commitments made in the Sino-Portuguese Joint Declaration and the provisions of the MSAR Basic Law.

Changes to the Code continue to show the influence of Portuguese legislation, which might be due to the continued existence in Macau's political structure and legal profession of a small Portuguese community, to the teaching of Macanese Law at a local university and the possible common ground (requiring further study) between the cultures of Portugal, China and Macau, on matters relevant to the design of a civil procedural model.

Keywords: Macau's Code of Civil Procedure; History; Portuguese cultural model; Stability.

I. The 25th Anniversary of Macau's Code of Civil Procedure

The title of this study may say little to a jurist unfamiliar with the Macanese Code of Civil Procedure (referred to below as CCP Macau), approved exactly 25 years ago, by Decree-Law 55/99/M, of 8 October.

Those familiar with the code will be aware that it deserves attention, for what it represents: the possibility of civil procedural law remaining in place in a culture different from that which generated it or, from another perspective, the relative impermeability of civil procedural law to the culture within which it holds sway, at least when compared with other fields of law¹.

In reality, the Macanese Code has remained practically unaltered, since its first appearance in 1999: if this fact itself amounts to a curious phenomenon at a time of legislative upheaval, it is all the more curious when we consider the Portuguese roots of the code, its applicability in a territory belonging to China, the distance of more than 10,000 kilometres separating Portugal from that territory and, in particular, the Chinese nationality or descent of the overwhelming majority

1 Either of these perspectives is somewhat provocative at a session of the 2024 Annual Congress of the International Association of Procedural Law, given over to "Cultural differences and their influence in proceedings" – the session at which this study was presented –, considering that it seems to be underlain by the idea that civil procedure is moulded by the specific features of different cultures. This study ended up being published in *Procedural Law in Multicultural Contexts, The Annual Colloquium of the International Association of Procedural Law (IAPL) 2024*, Anna Carlberg /Miika Kaakinen (eds.), Örebro University, 2025, 363-385.

of its inhabitants, far outnumbering those of Portuguese nationality or descent².

The text which follows will make reference to the origins of CCP Macau and describe briefly the changes it has undergone to date.

We will also consider developments in the Portuguese Code of Civil Procedure (CCP Portugal), which formed the basis of the Macau code, and also the changes in other Macanese legislation published in the final period of Portuguese administration, so as to underline something that has already been hinted at: the changes that CCP Macau has undergone are far smaller than those which have occurred in the legislation to which it is most closely related, either by virtue of serving as a source of inspiration, or else due to being contemporary.

A knowledge of the history of this Code and other legislation is clearly not in itself sufficient to understand the reasons for the Code's longevity, nor does this longevity signify that the Code has performed, in practice, its function of guaranteeing rights and interests through the courts³.

This study leaves a full understanding of this to other areas of science, and instead simply points to how we might reflect on a legislative experiment which, in the light of three very different cultures – Portuguese, Chinese and Macanese –, appears to be very successful.

II. History of the Macanese Code of Civil Procedure

1. The Code's origins

1.1. Adaptation of the Portuguese legislation in force in Macau

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- 2 The findings of the last Macau census, referring to August 2021, can be explored on the website of the Statistics and Census Service of the Government of Macau Special Administrative Region (here: <https://www.dsec.gov.mo/en-US/>) and are as follows: Macau has a total population of 682,070; of these, 608,379 had Chinese nationality, representing 89.2% of the total population; 8,991 individuals had Portuguese nationality, representing 1.3% of the total population; 609,863 people were of Chinese descent, accounting for 89.4% of the total population; 13,021 individuals were of Portuguese descent, representing 1.9% of the total population; of the total population without either Chinese or Portuguese population, there was a significant number with Filipino (5%) or Vietnamese (1.8%) nationality.
- 3 In late 2022, the reality of civil justice in Macau was described in none too optimistic terms by the President of the Macau Lawyers Association (*Associação dos Advogados de Macau*), in his address to mark the opening of the judicial year: “[...] our justice remains slow and subject to delays, with proceedings that have dragged on for years; at this moment, there are civil proceedings where trial hearings have been scheduled for the final quarter of next year [...]” (the address can be consulted at: <https://aam.org.mo/pt-pt/documentacao/discursos/>).

From the mid-sixteenth century until 19 December 1999, Macau was a Chinese territory under Portuguese administration (on a model that changed over time), and as from 20 December 1999 it has been the Macau Special Administrative Region (MSAR), part of the People's Republic of China; around 2 and a half years earlier (on 1 July 1997), something similar happened with its neighbour Hong Kong, which ceased to be a British colony and, with the handover of sovereignty to China, became the Hong Kong Special Administrative Region.

During the final phase of Portuguese administration, above all from 1996 to 1999, when three of what are called the "Central Codes" (*Grandes Códigos*, in Portuguese) – Civil Code, Code of Civil Procedure and Commercial Code – were drawn up⁴, the Portuguese legislation then in force in Macau (codes and other legislation) was adapted to the realities of the territory, in a procedure also known as "localisation". It was envisaged that this legislation would remain in force after China resumed exercise of its sovereignty over Macau.

In effect, under items 2, 4) and 12) of the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the question of Macau, signed on 13 April 1987 (referred to below as the Joint Declaration), it followed that "[t]he current social and economic systems in Macau will remain unchanged, and so will the life-style; the laws currently in force in Macau will remain basically unchanged", and also that all this would be unchanged for 50 years as from the constitution of the MSAR, i.e. until 2049.

Articles 5 and 8 of the MSAR Basic Law, adopted on 31 March 1993, at the First Session of the Eighth Legislature of the People's National Assembly of the People's Republic of China, intended to take effect on 20 December 1999, laid down, respectively, that "the socialist system and policies shall not be applied" in the MSAR, "previous capitalist system and way of life shall remain unchanged for 50 years", and that "[t]he laws, decree-laws, administrative regulations and other normative acts previously in force in Macau are maintained, save insofar as they contradict this Law or are subject to amendment in accordance with legal procedures, by the legislative body or by other competent bodies of the Macau Special Administrative Region".

Although it did not follow clearly from the above cited provisions of the Joint Declaration and the MSAR Basic Law that the legislation in force in Macau would be maintained in the MSAR (i.e. after the transfer of powers to China) if

4 The other two "Central Codes" – the Criminal Code and the Code of Criminal Procedure – were drawn up slightly earlier and were approved in 1995 and 1996 (respectively by Decree-Laws 58/95/M, of 14 November, and 48/96/M, of 2 September).

it had been produced by the bodies of Macau's own government⁵ and not by the Portuguese sovereign bodies with legislative powers, the fact is that this was the understanding that China consistently confirmed to Portugal – and was eventually laid down in Article 4.4 of the first law issued by the MSAR Legislative Assembly, the Reunification Law (*Lei de Reunificação*), approved by Law 1/1999⁶ at the actual moment of constitution of the MSAR and immediately after Portuguese administration came to an end⁷ –, with the result that those Macanese bodies quickly produced a large volume of legislation, in order to achieve the desired outcome of no change in the law in force: the process of “localisation” to which we have referred therefore signified, not just adaptation of the legislation, but also adaptation of the legislation carried out in the place where that adaptation was needed.

1.2. Main aspects of the adaptation of the Portuguese Code of Civil Procedure

The task of adapting civil procedural legislation to the reality of Macau involved a large amount of translation work, not only because the CCP Macau exists in a Portuguese and a Chinese version (like all other legislation currently in force in Macau), but also because the version of the Portuguese CCP previously in force in Macau had never been translated into Chinese.

It should be noted here that, although most people in Macau speak only Chinese, it was only in the late 1980s that it became compulsory, under Decree-Law 11/89/M, of 20 February, for Macau's own legislation to be published in a Portuguese version accompanied by a translation into Chinese⁸.

Adaptation of the Portuguese CCP that was in force in Macau to the reality of the territory naturally required replacing references in the text to Portugal, to

5 Macau's own government bodies during the period of Portuguese administration were the governor and the Legislative Assembly, as established in Article 4 of the Macau Organisational Statute (*Estatuto Orgânico de Macau*), approved by Law 1/76, of 17 February: both had legislative powers, exercised by the governor through decree-laws and by the Legislative Assembly through laws, as determined by Article 13.1 and 30.1 c) of the Statute.

6 According to this provision, “[t]he Portuguese legislation previously in force in Macau, including that drawn up by the sovereign bodies of Portugal exclusively for Macau, ceases to have effect in the Macau Special Administrative Region as from 20 December 1999”.

7 For this reason, the Reunification Law, together with other laws that were approved on 20 December 1999 by the MSAR Legislative Assembly, belonged to what became known as the “midnight legislation” (*legislação à meia-noite*).

8 This decree-law was revoked in the closing stages of the Portuguese administration of Macau, by Decree-Law 101/99/M, of 13 December, which, in Article 4.1, lays down that “[l]aws and administrative regulations are published in both official languages”.

the Portuguese courts or to Portuguese citizens with references to Macau, the courts of Macau and the territory's residents⁹, as well as replacing references to the Portuguese language with references to "one of the official languages" or "both official languages"¹⁰.

With regard to the need to enshrine the bilingual system in CCP Macau, we should note that, as from 1991 (more precisely, as a result of Decree-Law 455/91, of 31 December), the Chinese language had official status in Macau and the same legal force as the Portuguese language, and that, under Item 2 5) of the Joint Declaration, "[i]n addition to Chinese, the Portuguese language may be used in government agencies, in the legislative body and in the courts of the Macau Special Administrative Region". This determination is replicated in Article 9 of the MSAR Basic Law, which lays down that "[i]n addition to the Chinese language, Portuguese may also be used as an official language by the executive authorities, legislature and judiciary of the Macau Special Administrative Region"¹¹.

But it was in three specific areas that the localisation of the Portuguese CCP entailed additional efforts: the jurisdiction of the courts of Macau, cooperation between the Macau courts and other courts, and the effectiveness, in Macau, of jurisdictional rulings handed down outside Macau.

The reasons why more substantial adaptation of the Code was needed in these three areas were these:

– In some cases, the need to avoid the use of terms or expressions that might be interpreted as alluding to the sovereignty of Macau, in view of its imminent integration into China, or, seen from a different perspective, the need to avoid trespassing on China's sovereignty over Macau;

– In other cases, the small size of Macau's territory means there is no need for division into judicial districts, and so each court in Macau has jurisdiction over

9 For example, the rule in the Portuguese CCP, set out in Article 65 b), permitting an action to be brought before the Portuguese courts when the fact making up the cause of action occurred in Portuguese territory, gave way, in Article 15 b) of CCP Macau, to the rule permitting an action to be brought before the Macau courts when the fact making up the respective cause of action has occurred in Macau.

10 For example, whilst Article 139.1 of the Portuguese CCP required the Portuguese language to be used in procedural acts, Article 89.1 CCP Macau determines the use of one of the official languages in procedural acts; in certain cases, however, the latter code requires the use of both official languages (see Article 194 on the formalities for service of summons by public announcement when the whereabouts of the person summonsed are unknown).

11 Concerning the shift from the secondary status previously accorded to the Chinese language to official bilingualism, on an equal or absolute basis, established by the said Decree-Law of 1991, and pointing out that neither the Joint Declaration, adopted a few years earlier, nor the MSAR Basic Law, require such equal status, see Pedro Pereira de Sena, "Direito linguístico de Macau", in *Revista de Llingua i Dret*, no. 28, 1997, pp. 125-144 (pp. 129-135).

the entire territory, as was subsequently clarified by Article 16.1 of the Judicial Organisation Framework Law (JOFL), approved by Law 9/1999, of 20 December;

– In yet other cases, the reasons have to do with the judicial organisation instituted by the MSAR Basic Law which, in Articles 84 to 86, provided for primary courts, or courts of first instance (necessarily including an Administrative Court and a Court of Criminal Investigation, and allowing for the possibility, if needed, of courts with specialist jurisdiction), a Court of Appeal, or court of second instance, and a Court of Final Appeal. This structure is reflected and provided for in greater detail in the said JOFL.

This is why, in view of the first of these reasons, CCP Macau makes no provision concerning the international jurisdiction (*competência internacional*, in Portuguese) of the Macau courts, the sending of letters of request to or by foreign courts and other authorities, or the recognition of the judgments of foreign courts or arbitrators abroad, and instead deals more innocuously with the *jurisdiction of the courts of Macau* (see, for instance, Article 15), the sending of letters of request to or by *courts and other authorities outside Macau* (see, for example, Articles 126.1 and 134.1), and with the recognition of *judgments of courts or arbitrators outside Macau* (see, for instance, Article 1199.1).

In other words, the terms “international” and “foreign” are deliberately not used, in CCP Macau, when demarcating the jurisdiction of the MSAR’s courts in relation to that of courts not belonging to the MSAR (whether belonging to third States in relation to the People’s Republic of China, or belonging to the Hong Kong Special Administrative Region or to Mainland China).

The absence of judicial districts within the territory of Macau also explains why the Code does not indicate territory as a criterion for determining jurisdiction in the internal order for the bringing of actions (meaning that jurisdiction is determined on the sole basis of the criteria of hierarchy and subject matter, as specified in the JOFL, in particular in Articles 17 and 28 to 30), and also why there is no provision for letters of request to another (non-external) court in the part of the code dealing with the communication of acts (Articles 126 ff.), insofar as such letters, which presuppose requesting another Macau court to carry out a procedural acts, are not consistent with the possibility of each Macau court, within the limits of its jurisdiction on the basis of hierarchy and subject matter, handling procedures (questioning of witnesses, seizure of assets, service of summons, notifications, etc.) throughout the territory of Macau.

Lastly, the definition, contained in the MSAR Basic Law, of the categories of courts and the respective hierarchy can be seen in the rules in CCP Macau on jurisdiction (for example, those of Article 34, referring to the effects of a judgment on jurisdiction), on the distribution of cases to the primary courts, the Court of Appeal and the Court of Final Appeal (see Articles 155 ff.) or on ordinary appeals

(which include appeal to the Court of Appeal and another to the Court of Final Appeal, under Articles 600 ff.)¹².

1.3. Retention of the procedural model in force

Notwithstanding the necessary adaptation to the reality of Macau, as described in the preceding section, CCP Macau essentially reflected, at the date of its approval (8 October 1999), the corresponding Portuguese Code of 1961, in the version then in force in Macau.

This version was, in several aspects, different from that which was in force in Portugal.

In effect, there had been a reform of civil procedure in Portugal in 1995-1996, which had not been extended to Macau, and other legislative changes had had repercussions for the Portuguese CCP, but had not been implemented in Macau, including substantial changes, in 1993, to the procedure for liquidating the assets of debtors for the benefit of creditors (also known as bankruptcy), which has been eliminated and substituted by the rules contained in the new Special Proceedings for Business Recovery and Bankruptcy Code (*Código dos Processos Especiais de Recuperação da Empresa e de Falência*).

When CCP Macau was drawn up, it was felt that this Portuguese reform of 1995-1996 should only be imported to a certain extent, and there was a concern, shared by all those involved in the process of adapting legislation, to maintain the law in force in Macau, without automatically transposing to Macau recent changes in Portuguese legislation which had not yet been put to the test in Macau, and the outcome of which could not yet be assessed, even in Portugal.

At the same time, some of these innovations were not compatible with the way of life in Macau: this was the case of many of the provisions of the Special Proceedings for Business Recovery and Bankruptcy Code, which, by prioritising the business recovery system over bankruptcy proceedings, were difficult to conciliate with the capitalist system in Macau, where the predominant values were more entrepreneurial and hard-headed, and better served by the old bankruptcy rules.

More than just a requirement of the Joint Declaration and the MSAR Basic Law (which, we may recall, defended that the legislation in force be retained and Macau's way of life preserved), the decision not to import, into Macau, all the recent changes in legislation in Portugal, amounted to recognition of the unique features

12 For further detail on adaptation of CCP Macau in the three areas indicated, and the reasons for such adaptation, see Isabel Alexandre, "Sul nuovo Codice di Procedura Civile di Macao", in *Rivista di Diritto Processuale*, no. 2, 2000, pp. 382-403 (pp. 390-394), and "A competência dos tribunais no novo Código de Processo Civil de Macau", in *Boletim da Faculdade de Direito da Universidade de Macau*", no. 10, 2000, pp. 103-120.

of the Macau community, in its economic, social, political and cultural life, which made it distinct from Portugal, and which Macau's residents, including those of Portuguese nationality and descent, constantly emphasised and wished to preserve.

Merely by way of example of the similarity between CCP Macau and the corresponding Portuguese Code of 1961, in the version in force in Macau, we may note that both Codes are organised along essentially the same lines, based on the fundamental division between general provisions (applicable to any proceedings), ordinary proceedings for declaratory relief, ordinary enforcement proceedings and special proceedings, the enumeration (non-exhaustive) of procedural preconditions, i.e. the conditions for admissibility of the action, was practically identical (jurisdiction, legal personality, judicial capacity, standing, legal representation, etc.), the types of procedural acts and the respective rules were very similar (in particular, the rules on service with summons and procedural nullities), and the forms of procedure established in the code and the respective rules were also very much alike.

Whilst the reform of the Portuguese CCP in 1995-1996 was not extended to Macau, nor did the preparation of CCP Macau seek to adopt that reform as a whole, a number of features did exercise an influence. This can be seen in the strengthening of the principles of adversarial process (Article 3), equality of the parties (Article 4) and cooperation (Article 8), the stronger powers given to judges (Articles 5 and 6) and the introduction of the principle of formal adequacy, enabling the judge to determine, after consulting the parties, the procedural acts best suited to the purposes of the proceedings (Article 7).

With regard to the importation of recent Portuguese innovations in certain cases, the preamble to the legislation approving CCP Macau tells us that the risks of change were held to be of little importance when that change resulted in simplifying, strengthening the rights of the parties, or ensuring that the purpose of proceedings was to secure justice.

Indeed, the local community had for some time lamented the archaic nature of some aspects of the Code in force, and been calling for modernisation.

1.4. Cultural influences on the Code

The task of adapting the Portuguese CCP to the realities of Macau involved not just Portuguese jurists appointed by the Governor of Macau (or by the Assistant Secretary for Justice, to whom the Governor delegated powers) for the purpose of drafting a new Code (in record time), but also Chinese and Portuguese members of the Sino-Portuguese Joint Liaison Group, set up under item 4 of the Joint Declaration of 1987, and the respective annex II.

That Joint Liaison Group (known as the GLC, in Portuguese), remained in

office until 1 January 2000, and served the purpose of liaison, consultation and exchange of information between the Portuguese and Chinese governments. It was responsible for ensuring the Joint Declaration was effectively implemented, and for paving the way for the handover of power in Macau in 1999.

Insofar as CCP Macau preserves the essential features of the Portuguese CCP then in force in Macau, whilst importing a few select innovations from the reform undergone by civil procedure in Portugal in 1995-1996, and serving to underpin Macau's private law, which is Portuguese in origin, it is unarguable that the main cultural influence is from Portugal, which has a Romano-Germanic legal system.

In choosing not to import blindly the recent reform of civil procedure and other legislative changes in Portugal, including, as we have seen, the new business recovery procedure, in other words, by preserving most of the law already in force in Macau, and in allowing for use, in civil proceedings, of Macau's two official languages, we can point to the cultural influence of the territory's own community, conveyed through legal professionals, university teachers, the legal staff of Macau's public services and the members of the Macanese Legislative Assembly, who were consulted, sometimes informally (at public information sessions, for example), during the legislative procedure that culminated in CCP Macau.

The influence of Portuguese culture and of Macanese culture is also visible in the care taken by CCP Macau to guarantee the right of access to the courts and the rights of parties in proceedings, which explains why the text of the Code expressly enshrines some of the features of the Portuguese reform of civil procedure which strengthened those rights, and why the first article of the Code is given over to the guarantee of access to the courts and not, as in the Portuguese Code previously in force, to the prohibition of self-defence: this change in the ordering of provisions (apparently innocuous, not least because the MSAR Basic Law already enshrined the same guarantee in Article 36) points clearly to the priority attached, during the period of Macau's transition from Portugal to China¹³, by the Portuguese government and Macau's own government bodies, to the defence of fundamental rights and protection of the interests of the population of Macau.

The influence of the Chinese members of the Joint Liaison Group, whose central concern was that CCP Macau should be consistent with the MSAR Basic Law, as regarded the judicial organisation envisaged for Macau, can be seen in particular in the provisions of CCP Macau which avoid any allusion to the sovereignty of Macau and, also, in those that reflect the hierarchy of Macau's

13 The transition period ran from the date of entry into force of the Joint Declaration of 1987 until 19 December 1999, in accordance with item 3 of the Joint Declaration.

courts, consisting of primary courts, the Court of Appeal and the Court of Final Appeal, as referred to in item 1.2.

This Chinese influence can also be seen in the curious way that the Code retains the criterion of reciprocity in order to determine the jurisdiction of the courts of Macau, which had recently been abandoned in Portuguese civil procedural law, due to being underpinned by an idea of retaliation which, in Portugal, was felt to have no place in shaping international judicial cooperation.

The rule in question – whereby the Macau courts would have jurisdiction when the respondent was not resident in Macau but the claimant was a resident, provided that, in an identical action brought by the respondent in the courts of his place of residence, the claimant could be sued – was felt by the Chinese members to be particularly just and, on their insistence, was enshrined in Article 15 b) of the Code.

The influence of the Chinese members of the Joint Liaison Group on the drafting of CCP Macau can also be seen in the absence, from the initial version of the code, of rules on the unification of case law by the Court of Final Appeal, which had been included in the draft of the Code published by the Macanese government in December 1998 – which absence was explained, in the preamble to the legislation approving the Code, by the “necessary coherence with legislative options relating to judicial organisation” and the understanding that it would be “premature to regulate matters not yet defined at that level, such as unification of case law”.

In effect, at the precise moment of constitution of the MSAR (on 20 December 1999), upon approval of the JOFL by Law 9/1999, rules designed to unify case law were added to CCP Macau (as Articles 652-A ff.), identical to those included in the draft of 1998, showing that the intention was to define the powers of Macau’s Court of Final Appeal, which included those of unification of case law (mandatory for the courts of Macau), only when China resumed exercise of its sovereignty over Macau, because that was a decision to be made by the MSAR legislative body and not by the government bodies of the territory of Macau established under Portuguese administration.

In any case, the failure to provide for a system, in Macau, for having conflicting case law resolved by the judicial authorities themselves in the course of civil proceedings would sit badly alongside the possibility of establishing mandatory case law for the courts of Macau in criminal proceedings, as had been enshrined, three years prior to approval of CCP Macau (more precisely in 1996, in Decree-Law 48/96/M, of 2 September), in Articles 419 ff. of the Macanese Code of Criminal Procedure (CCrimP Macau), referring to the extraordinary appeal for establishing case law to the (then) Higher Court of Justice: the decision to institute

a similar mechanism in CCP Macau was therefore coherent¹⁴, even though, as far as is known, this has not had practical consequences, because the Court of Final Appeal in the MSAR has so far not handed down any judgment on unification of case law in civil proceedings¹⁵.

2. Changes to the Code

Since it took effect on 1 November 1999, only four changes have been made to CCP Macau.

The first of these has already been described, relating to introduction by the JOFL approved by Law 9/1999 of rules for unification of case law, which had been studied and proposed under Portuguese administration and, for the political reasons explained above, were only incorporated at the moment of constitution of the MSAR, on 20 December 1999: the introduction of these rules entailed redrafting one Article of CCP Macau (Article 583) and adding four new articles (Articles 652-A to 652-D).

So rather than actually changing it, the new rules complement the Code, and are inspired by the Portuguese reform of civil procedure of 1995-1996 – to the effect that case law is to be unified in the course of ordinary appeals, with the matter being decided by a panel of judges larger than that involved in most appeals (see Article 652-A.1, CCP Macau, in conjunction with Article 46.2 JOFL) – and also by CCrimP Macau, in particular Article 652-C.1, where it clarifies that judgments to unify case law constitute mandatory case law for the courts of Macau (in effect, the Portuguese reform made no provision about the value of those judgments, which suggested they were not actually binding).

The second of the changes to CCP Macau was made by Law 9/2004, which altered some of the rules on the distribution of proceedings, adapted other rules on expert evidence and testimonial evidence to the nomenclature of public offices in the MSAR¹⁶, established the rule, subject to exceptions, of service of summons by the court registry, of its own motion (i.e. without a prior order from the judge, ordering such service)¹⁷ – a rule which had moreover been included in

14 Although not identical, as judgments for unification of case law in civil proceedings are rendered in ordinary appeals (i.e. before the decision under appeal becomes final), and not in extraordinary appeals (i.e. after the decision under appeal has become final), as happens in criminal proceedings.

15 Judgments for unification of case law from the Court of Final Appeal may be consulted, in Chinese and Portuguese, on the MSAR courts website: <https://www.court.gov.mo/pt/subpage/casearch>.

16 For example, where CCP Macau read “Governor”, it was changed to read as “Chief Executive” (see, in relation to this example, Article 492.2 a)).

17 See Articles 695.1, and 177-A CCP Macau.

the 1995-1996 reform of the Portuguese CCP of 1961¹⁸, but which had not been incorporated in the initial version of CCP Macau, which, in this respect, as in many others, retained the rules in force in Macau –, permitted eviction proceedings, when based on non-payment of rentals, to follow summary procedure (shorter than ordinary procedure, which was to be followed as a rule)¹⁹ and, lastly, added provisions on small claims proceedings (in particular, on consumer disputes), which were to be governed by Articles 1285 to 1297 and heard before the new Small Civil Claims Divisions, under Article 29-A JOFL – something that had in fact been planned since the time of the Portuguese administration, insofar as Decree-Law 17/92/M, of 2 March, which had approved the judicial system in Macau, already made provision, in Article 18.2, for the possibility of creating a Small Claims Court.

In later 2015 the MSAR Government presented a proposal for review of the CCP Macau, envisaging, among many other matters, changes to the rules on service of summons, adjournment of hearings, trial by a panel of judges, appeals and divorce procedure²⁰. The proposed changes were substantial, some of them inspired by more recent Portuguese legislation, but this initiative has not been followed up.

The same can be said of another draft review presented in 2018, which, among other things, increased the powers of the judge with regard to the facts they could consider (thereby restricting the reach of the principle that the action is confined to the subject-matter as delimited in the application), altered certain rules on jurisdiction and service of summons and introduced, in the context of provisional measures proceedings, the concept of reversal of litigation (*inversão do contencioso*, in Portuguese)²¹.

The third change to CCP Macau was made by Law 4/2019, which extended the scope of application of summary procedure to actions of a value greater than initially envisaged for that procedure (cf. Article 371), restricted the cases where a panel of judges was involved in discussing and deciding on the cause (cf. Articles 431 and 549) – along lines similar to those adopted in Portugal in 1999 (with Decree-Law 375-A/99, of 20 September) –, and amended the rule on decisions

18 See Article 234 Portuguese CCP 1961, in the version emerging from the reform of 1995-1996.

19 See Article 930 CCP Macau.

20 An opinion dated 2016 from the Macau Lawyers Association is fairly critical of this proposal (which the author was unable to access directly), and can be consulted on the association's website (here: <https://aam.org.mo/pt-pt/documentacao/pareceres/>).

21 The content of the proposal referred to in the text (to which the author did not have access) is described in an opinion dated 2018 of the Macau Lawyers Association, which may be consulted on the website indicated in the preceding note.

subject to appeal to the Court of Final Appeal (Article 638).

The fourth and last change to CCP Macau is due to Law 19/2024, which altered the rules on eviction proceedings, establishing, for certain cases of non-payment of rent on time by the tenant, a more simplified procedure than the current one for obtaining eviction from a building. According to the statement of reasons of the respective draft law, the new regime has been modelled on the Portuguese eviction rules²².

It follows from the above that none of the changes made to CCP Macau have affected its principles or essential aspects of the procedural rules it contains, many of them consisting of solutions which had already been proposed under the Portuguese administration and/or were justified for the sake of procedural simplification, economic development (as in the case of changes to eviction proceedings) or protection of certain more vulnerable groups (such as consumers, in the case of small claims proceedings), and with no intention of breaking away from the established procedural arrangements.

The Code therefore remains true to its original Portuguese model.

There is also no new legislation on civil procedure that might render the Code less relevant in practice: the only legislation that might in some way have this effect is that on arbitration, both voluntary and compulsory²³, which is not of a civil procedural nature, or that relating to the online submission of pleadings and payment of court costs²⁴, applicable not only to civil proceedings; in any case, this legislation is part of a wider shift towards dejudicialisation and the use of online resources in judicial proceedings, which may also be observed in the Portuguese legal systems (and most such systems worldwide).

III. Comparison with developments in the Portuguese Code of Civil Procedure

Consulting CCP Macau in 2024, a scholar of Portuguese procedural law feels transported back to the past, because, even with the changes made to the original version, they will find more similarities with the old Portuguese CCP of 1961, than with the current Portuguese CCP, which dates from 2013.

22 The draft law (proposed by the MSAR Government) and the related proceedings may be consulted on the website of the MSAR Legislative Assembly, at: <https://www.al.gov.mo/pt/law/lawcase/590>.

23 See, respectively, the Arbitration Law, approved by Law 19/2019, and the Compulsory arbitration rules for disputes concerning water infiltration in buildings, approved by Law 9/2023.

24 See Law 5/2022.

Whereas, since first taking effect, the Macau Code has only undergone the four changes referred to in the preceding section, in Portugal, the recent history of legislation concerning civil procedure has been much more turbulent.

In effect, the previous Portuguese CCP, on which the Macau code was based, underwent more than 30 changes between the date of entry into force of the Macau Code and 2013; and in 2013, as we have seen, a new Code was approved in Portugal. This was not the end of the legislative upheaval: the Portuguese CCP of 2013 has so far undergone thirteen changes.

Although the new Portuguese CCP has not departed from the procedural model previously in place, the changes include the renumbering of the articles of the previous Code (which could have been avoided, in view of the complications it created), the introduction of new principles (for example, the principle of judicial case management), the elimination of procedures (both special and ordinary), changes to the design of certain procedures (for instance, ordinary procedure for declaratory relief, which, also by way of example, now entails less submissions and no longer requires the decision on the matter of fact and the decision on matter of law to be taken at distinct stages), changes to the rules on provisional measures proceedings (in particular, in the section relating to permission, when certain requirements are met, for converting an injunction, or precautionary measure, into a definitive decision), creation of new procedural acts (for example, the order intended to identify the subject matter of the dispute and enunciate the topics of evidence) or the enshrinement of new forms of evidence (party statements and qualified non-judicial inspections).

This points us to a curious phenomenon: Portugal's old procedural law appears to have survived better in a culturally different setting than in the same, or similar, cultural setting.

IV. Comparison with developments in other legislation in Macau

If we now compare the evolution of CCP Macau with some of the legislation connected to it, approved under the Portuguese administration and kept in force after constitution of the MSAR (not including, because of its "midnight" approval, the JOFL, which deals with the organisation of courts of Macau and naturally shapes many of the arrangements of procedural law in the MSAR²⁵), what we

25 The JOFL has been amended on four occasions, the last by operation of Law 4/2019, which republished it. Of the various changes, the most significant for the rules on jurisdiction and appeals in CCP Macau was the organisation of the Primary Judicial Court (which is, alongside the Administrative Court, a court of first instance) into divisions and the increase in the upper limit for the value of proceedings in the primary courts and the Court of Appeal (see, respectively,

find differs little from what we saw in the previous section: the Code has largely been left at peace.

This is especially clear when we consider the changes made to the slightly older CCrimP Macau (dating from 1996): in addition to a change made by the Portuguese administration, under Decree-Law 63/99/M, of 25 October, we may point to those effected by Laws 9/1999, 3/2006, 6/2008, 2/2009, 17/2009 and 9/2013; the Code was eventually republished in 2013, and then went on to be altered again by Laws 4/2019, 10/2022 (concerning the important legal rules on the interception and protection of communications) and 8/2023, and also to be partially revoked by Laws 9/2013, 10/2022 and 21/2023.

In the field of substantive legislation, we may observe the following.

Shortly before the approval of CCP Macau (but taking effect on the same date, 1 November 1999, as determined by Decree-Law 48/99/M, of 27 September), the Macau Civil Code and Commercial Code were approved (by Decree-Law 39/99/M and Decree-Law 40/99/M, respectively, both of 3 August 1999), which, together with CCP Macau formed the “Central Codes”: the Civil Code has since undergone two partial repeals (one operated by Law 14/2017, which established the legal rules on management of the common parts of condominiums, and the other by Law 18/2022, establishing the legal rules on urban renewal) and four changes (see Laws 13/2017, 11/2024, 18/2024 and 19/2024) and the Commercial Code has undergone four changes under Laws 6/2000, 16/2009, 4/2015 and 18/2024, as well as a partial repeal under Law 4/2015.

Only the Macau Code of Administrative Judicial Procedure, approved by Decree-law 110/99/M, of 13 December, appears to have withstood the passage of time better than CCP Macau, having so far undergone only one partial repeal (under Law 19/2019) and two amendments (effected by Laws 4/2019 and 5/2022), neither of them particularly significant.

V. Reasons for lasting influence

It follows from what was said above that Portuguese civil procedural law continues to have influence in Macau.

What might explain this continued influence, which, precisely because what is at stake here is the drafting of new legislation, can no longer be entirely explained either by the commitments made in the Joint Declaration, or by the provisions of the Basic Law on the retention of the law in force in Macau for a period of 50 years?

Articles 27.2 and 18.1).

An influence so strong that led the Macau Lawyers Association, in an opinion issued on the proposed review of 2018, to say that although the CCP, like other legislative instruments in the MSAR legal system, must “remain true to its model, on pain of legislation losing its way”, it was advisable to study “arrangements established in other legal systems in order to solve isolated issues”²⁶?

We cannot exclude the possibility that one of the reasons for Portuguese influence on the new legislation which has been drafted is the fact that the Portuguese community in Macau, whilst ever smaller, still enjoys representation in the political structure of the MSAR – in particular through civil servants and public officers who work for the executive authority (the MSAR Government) and the legislature (the MSAR Legislative Assembly) and through judges in the courts²⁷ –, as well as in the Macau Lawyers Association, which, among other prerogatives, “must be consulted in connection with proposed or draft legislation regulating the organisation of the courts, the exercise of the legal profession, civil and criminal procedure”²⁸.

The fact that the University of Macau has a Faculty of Law which offers a degree course in law taught in Chinese, another taught in Portuguese and a third in both languages, all three centred on the Macanese legal system and containing curricular units similar to those making up the law degree courses at Portuguese universities²⁹, has certainly helped to preserve the underlying Portuguese model in Macanese law and to ensure that the Romano-Germanic tradition has not been forgotten in Macau, not least because the jurists trained at this faculty will tend to exercise their profession in Macau; in any case, on this point, we should note the growing counter-tendency for the study of Chinese law in Macau, reflected in the courses offered on the subject in the territory’s faculties³⁰, although these

26 This opinion dated 2018, already referred to in note 23, can be consulted here: <https://aam.org.mo/pt-pt/documentacao/pareceres/>.

27 The last Judicial Year Report (*Relatório do Ano Judiciário*), for 2022-2023, still names four Portuguese judges in the list of judges at MSAR courts on pp. 41-42 (the Report may be consulted here: <https://www.court.gov.mo/pt/subpage/annual>).

28 From 1995 to 2000 and from 2002 to 2022, the president of the Macau Lawyers Association was a Portuguese lawyer, Jorge Neto Valente. On the Association’s prerogatives and responsibilities, see Article 30 of the Lawyer’s Statute (*Estatuto do Advogado*), republished by Decree-Law 42/95/M, of 21 August.

29 Information on this may be consulted on the website of the University of Macau: <https://www.um.edu.mo/>.

30 In particular at the School of Law of City University of Macau (as may be seen by consulting its website: <https://sol.cityu.edu.mo/>) or at the Faculty of Law of the University of Macau, already mentioned, which, in addition to those referred to in the text, offers a course entitled “Degree in

do not, as yet, qualify graduates to exercise certain legal professions in Macau.

Lastly, and because the two previous factors do not explain the comparatively greater stability of CCP Macau in relation to other legislation drawn up under the Portuguese administration, alluded to in section IV, we have to consider the hypothesis that, despite their differences, the cultures of Portugal, China and Macau have common ground on matters relevant to the design of a civil procedural model, in particular in the role they assign to the judge in conducting the proceedings and the importance they attach to cooperation between all the parties in the procedure and to discovery of the truth.

This possible common ground – notwithstanding the need for this topic to be explored more fully by other areas of study, as I suggested in section I of this article – may turn out to explain both the comparatively few changes so far made to the Code, and the content of such changes as have been put forward.

Law (Chinese Law and Global Legal Studies)”, which may be consulted at: <https://fl.um.edu.mo/programme/bachelor/bachelor-of-law-in-chinese-law-and-global-legal-studies/>.