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## Editorial

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## EDITORIAL

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**1.** This special issue of e-Pública contains some of the contributions of Portuguese scholars to an EU co-funded project after due peer review: TRIAL - TRust, Independence, Impartiality, Accountability of Judges and Arbitrators Safeguarding the Rule of Law under the EU Charter (of Fundamental Rights)<sup>3</sup>. The project is lead by the European University Institute. CIDP - Lisbon Public Law has been working together with other twelve consortium members across Europe towards creating a platform where national courts, arbitrators, lawyers, prosecutors, and other civil servants can exchange views on challenges and good practices on rule of law across Europe. In doing so, the project hopes to improve the ability of legal practitioners to foster national cross-sectoral cooperation and as well as dialogue between national and European courts.

**2.** The rule of law and the implementation of EU law and international standards are a common challenge amidst all EU Member States. Portugal is not an exception; we merely find a set of different expressions of these challenges across Europe. Portugal still struggles with the effectiveness of its justice system. It is necessary to increase awareness that effective justice systems are at the heart of rule of law but also crucial for sustainable development and the human development of society at large. Beyond structural reforms, national authorities would also benefit from capacity-building training on pre-litigation efforts, better information, and communication in everyday interactions with citizens. We seem to keep forgetting that from cradle to grave citizens' lives are bound to interact with public institutions: in filling their taxes, in registering a birth, in crossing borders and settling their immigration status

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1. Guest lecturer, University of Lisbon School of Law; executive coordinator and assistant researcher, CIDP - Lisbon Public Law; senior consultant, Portuguese Government legal service JurisAPP; member, Commission on the Access to Administrative Documents.

2. Collaborator research fellow, CIDP - Lisbon Public Law.

3. Grant Agreement no. 853832, Justice Programme 2014-2020.

Good practices in Portugal show the added value of a less court-centric justice system with ombudspersons, national human rights institutions and arbitrators contributing to more impartial, expedited processes, legal clarity, and better implementation of EU law.

The lack of public debate on why there are several fundamental rights topics on which Portuguese courts consistently diverge from ECtHR and/or CJEU case law would deserve further enquiry and may raise issues as to the limits of accountability. In this sense we are embracing EC's concept of shared responsibility: lawyers, judges, but also the legislator and policy makers.

On the set of challenges identified by the European Commission Rule of Law Report, Chapter on Portugal 2021, most of them have gone or are undergoing legislative structural reform, particularly regarding the fight against corruption. This demonstrates how the instruments in the European Commission Rule of Law "toolbox", and the multilevel dialogue between EU and national authorities can trigger meaningful legislative and policy making initiatives.

Finally, "any new legislation is only as good as its implementation"<sup>4</sup>. While some of the rule of law challenges might still call for structural reforms, most of them need to be tackled through timely and effective implementation of the already existing legal framework. Judges and justice practitioners are centre stage to a full and uniform application of rule of law as per Article 2 TFEU.

**3.** The articles included in this issue are a good sample of the set of issues that these questions pose.

Ana Rita Gil, acknowledging the importance of Ombudspersons as bastions of the rule of law, fundamental rights, and good administration, highlights a mechanism of cooperation and dialogue between the national and the European Ombudspersons: the "query procedure". By resorting to it, national institutions may pose questions to the EU Ombudsperson on the interpretation and application of EU Law. The author offers a critical assessment of its advantages and inconveniences and draws the attention to the importance of non-judicial mechanisms to uphold the rule of law.

Patrícia Fragoso Martins, in turn, focuses on the centrality of the independence of the judiciary in the European Union, particularly from the perspective of the State liability for judiciary errors. Apart from taking stock from the jurisprudence of the Court of Justice of the EU (CJEU) on the topic, it also covers the case-law of high courts in Portugal so as to clarify the impact of said CJEU case-law on the national judicial practice.

Marta Vicente turns her attention to public law arbitration and makes the case for more demanding standards of independence and impartiality

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4. President Ursula von der Leyen, Mission letters to Commissioners, 1 December 2019.

therein, especially taking into account that public law arbitrators review the validity of sovereign action, the non-confidentiality of the awards, and the similarity of the claims. The author takes advantage of the contributions of investment treaty arbitration on the same topic and EU law.

Finally, Domingos Soares Farinho moves away from pure public - administrative or judicial - action to stress the importance of self-regulation. The pretext is the new Digital Services Act (DSA), which covers content management and conflict resolution for online platforms. The perspective adopted is one of fundamental rights protection and promotion, offering a first appraisal to the conflict resolution mechanism put forward by the proposal.

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