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THE EUROPEANIZATION OF PORTUGAL

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ABSTRACT: The article aims to explore Portugal's performance in some areas that can be included in a wide concept of Europeanization: the state of the economy, the rule of law, and education. It starts with a brief reference to the evolution of the Portuguese economy since the European accession to conclude that with the adoption of the single currency Portugal entered into a phase of clear economic divergence, making it an exception within the EU. Section 2 is devoted to the rule of law. It highlights how a modern and updated legal system can have an outcome that threatens some basic foundations of the rule of law, and can also contribute to increasing social inequality. The last section focuses on some problems affecting education. Particular attention is drawn to the performance of the secondary education system and to issues related to the quality of higher education institutions.

Key words: Portugal; Europeanization; rule of law; economic divergence; education

The European Union requires the member states to incorporate the *acquis communautaire* into its domestic law, open its frontiers to the free movement of persons, goods and services, adopt the Euro as the single currency, and fully participate in the Union's political process. Despite the limits of EU jurisdiction, there is an ongoing process of homogenization among European countries that is strictly related to the construction of Europe, but not confined by the EU boundaries of power. For instance, although education remains an area that is exclusive to each member state's competence, this did not prevent the creation of a European space of higher education, through the Bologna process.

It is possible to refer to the process by which European countries tend to strengthen relationships through economic integration as well as greater homogeneity at the social and cultural levels as a path of Europeanization (Laffan and Stubb 2008: 72). This development is also derived from the cultural heritage and the existence of shared values, such as democracy, human rights, rule of law and the welfare state. Hence, Europeanization is as a concept derived from European integration, but has a larger scope

than the EU because it is the outcome of a set of factors like economic interdependence, citizenship, cultural exchanges, civil society connections, EU rules, or academic mobility.

In Portugal, there have been deep-seated political, economic, social and cultural changes over the last decades, which were due to the processes of democratic consolidation and European integration. In particular, the latter allowed for a strong process of economic modernization and an important improvement in living conditions. However, there is a widespread feeling in Portuguese society that the country is facing a downshift when compared with other European states, with an overwhelming majority considering the situation to be bad.¹

This article aims to explore Portugal's performance in some crucial areas: the state of the economy, the rule of law, and education. These areas were selected because of their close relationship with the ongoing process of Europeanization. With regard to the economy, Portugal suffered from an historical backwardness when compared with other European countries (Reis 2000: 245). Accession to Europe was seen as an opportunity for the catching-up of the Portuguese economy. In fact, in the 15 years that followed the accession Portuguese GDP was converging with the European Union average. Then, with the new century Portugal seemed to end its path of economic convergence to gradually become the big disappointment amongst the group of the catching-up states (European Commission 2008: 115).

There is a strong link between the rule of law and political democracy. It should be noted that one of the main reasons that led the Portuguese government to apply to join the Union was to strengthen the democratic regime established in the aftermath of the 1974 revolution (Pinto 2003: 46). Even if Portugal has a consolidated democracy, it is still important to question some critical dimensions of the rule of law that could affect the quality of Portuguese democracy and try to understand some of the reasons that prevent a better performance in this area.

The last area to be analysed is education. Education plays a fundamental part in providing citizens with the knowledge and skills needed for an active participation in society and in the economy. There is a firm relationship between the educational system and the level of economic and social development of each country. Hence, the Europeanization of Portugal is strictly related to the achievement of its educational policy.

1. 'The overwhelming majority of the Portuguese (92 percent) considered the economic situation of the country to be bad, and an even higher proportion (95 percent) expressed an identical opinion with regard to the domestic employment situation. In comparative terms, the Portuguese stand out considerably from the European average'. Eurobarometer (2008: 2).

The article starts with a brief reference to the evolution of the Portuguese economy since the European accession to find out that with the new century Portugal entered into a phase of economic divergence, making it an exception within the Euro area. Section 2 is devoted to the rule of law. It highlights how a modern and updated legal system can have an outcome that threatens some foundations of the rule of law, and can also contribute to increasing social inequality. The last section focuses on some problems affecting education. Particular attention is paid to the performance of the secondary education system and to issues related to the quality of higher education institutions.

1. Economic divergence

Any global analysis of the national economy since the Portuguese accession to the European Communities has to be clearly positive. Indeed, it should be remembered that in 1986 Portugal's GDP was just 54 percent of the average European Community GDP of 12 member states. In 2008, the Portuguese GDP was 66 percent of the enlarged European Union GDP of 27 member states. Greater than the progress in the relative income of the country is the perceived feeling of modernization that swept across the country in the last two decades. This was mainly favoured by European integration (Royo 2006: 109).

However, it should be noted that in 2001 Portugal had reached 75 percent of the European Union GDP of 15 member states (European Commission 2001: 309). Since then the relative income of the country has stalled at just 66 percent of the enlarged European Union. Hence, it seems that it is possible to divide Portugal's economic performance since the European accession in two periods: an initial phase starting with the accession in 1986 until the end of the century; and then, a second phase that has lasted to the present.

During the first phase, Portugal went through a remarkable improvement in its economic conditions, in part due to the effect of the financial transfers provided by the European Union structural funds. The European funds allowed for a deep-seated transformation of the physical infrastructures of the country. The modernization of infrastructures also reached the educational system and the facilities available for the National Health Service. It contributed to an improvement in public transportation and a decrease in the housing deficit (Soares 2007: 467). In general terms, it could be said that Portugal was very successful during the first phase of accession, with a noticeable increase in the quality of people's life (Barreto 2003: 175).

The second phase saw a reversal of the catching-up trend towards the European Union average (OECD 2008a: 3). Indeed, if during the first 15 years of European accession, the Portuguese income came closer to that of the European Community, since the beginning of the new century Portugal has entered into a phase of clear divergence with the European Union. This divergence is even more troubling when the Eastern enlargement, which brought to the Union 12 new member states with worse economic situations, is considered.

The adoption of the single currency could be considered the turning point regarding the Portuguese economic performance.² Until the monetary union the Portuguese economy was doing well, and was gradually narrowing the gap with the other Union member states. During the first half of the 1990s Portugal was even held by the European Community institutions as a model for Eastern candidate countries, due to the success achieved in that period. But 10 years later Portugal had become a warning example to other European Union countries in the process of joining the Euro (Abreu 2006: 5).

The single currency has been a driver for real economic convergence, with most cohesion countries benefiting from a clear process of growth. In 1999 the level of GDP per capita in Greece, Spain and Portugal were, respectively, 71, 84 and 68 percent of the Euro area average. In 2008 Greece and Spain have further reduced the difference, with 90 and 94 percent of the Euro countries' average, respectively. By contrast, Portugal's level of GDP per capita has decreased to 64 percent. Hence, monetary union contributed to a strong pace of catching-up for the cohesion countries, not to speak of Ireland, with Portugal being the sole exception (European Commission 2008: 106).

One of the reasons that could help explain the poor performance of the Portuguese economy is the different behaviour of fiscal policy in the so-called cohesion countries in the last 10 years. As far as the public sector size is concerned, the total of expenditures in GDP was reduced in Spain and Greece during the last 10 years, but it expanded in Portugal. Fiscal consolidation in Ireland and Greece took place on the expenditure side, and in Spain it was achieved through both expenditure restraint and higher revenues (European Commission 2008: 111). Portugal was the only country that increased its expenditure in the same period. In fact, the Portuguese authorities took advantage of larger revenues coming from

2. It is interesting to note that when asked whether your country would have been better protected in face of the current financial and economic crisis if it had kept the former currency, Portuguese were those that clearly delivered the highest positive answer within the Euro area, with 62 percent (Euro zone average, 45 percent) (Eurobarometer 2009: 37).

privatizations and from lower interest rates to increase public expenditures, instead of reducing the global weight of public administration in the national economy (Amaral 2007: 219).

The divergent performance of the Portuguese economy in the period that followed the adoption of the Euro can be further explained by a set of elements. Beyond fiscal policy grounds another reason that could help to understand the poor behaviour of the Portuguese economy in the last decade is the conversion rates, which had been fixed by the time of the monetary union entry. National currency rates were irrevocably converted at the end of 1998. The European Commission considers that the real effective exchange rate of Spain is now at the same level it was in the early 1990s, while that of Portugal is more than 20 percent higher. This helps to understand Portugal's stronger loss of economic competitiveness when compared to Spain (European Commission 2008: 113).³

An additional explanation for the difficult situation of the Portuguese economy is to be found in its specialization model (OECD 2008a: 6). Portuguese exports are largely based on low-skill intensive industries such as textiles, footwear and apparel. Those industries were particularly affected by the European Union Eastern enlargement, which favoured the outsourcing of some multinational companies to the new member states, where they could obtain EU financial aid for their investments, benefit from cheap salaries and be closer to the main European markets. Furthermore, some of those industries were especially exposed to the general effects of globalization and to the entry of large low-wage countries in the world trade system, like India and China. EU commitments taken at the World Trade Organization level freed the access to European markets for textiles coming from emerging economies. The joint consequences of these European and global trade aspects eroded the competitiveness of core Portuguese export sectors (Soares 2007: 472).

The situation of the Portuguese economy would recommend the adoption of measures aimed at achieving economic stabilization goals. The main tools available for stabilization policies are monetary policy, exchange rate policy and fiscal policy. However, in the context of the single currency member states are deprived of the areas of monetary policy and exchange rate policy, to the benefit of the monetary union (European Commission 2008: 52). Moreover, even if fiscal policy is still formally part of member states' jurisdiction, this is an area where

3. According to Mauro and Forster, Portugal is considered to be at the bottom of the ranking of competitiveness indicators within the Euro area because of its geographical situation, technological disadvantages and the high entry costs in new economic sectors (2008: 37–8).

the adoption of national policy measures is strongly limited by the obligations coming from the Maastricht Treaty and the harder constraints deriving from the so-called Stability Pact (Amaral 2007: 218).

Nevertheless, it should be said that in the aftermath of the 2008 global financial crash Euro membership acted as a kind of a shield for the Portuguese economy. Indeed, and despite the road of divergence that has marked the Portuguese economy since the beginning of the single currency, the country has not suffered from the effects of the world economic and financial crisis in the way same as other European Union member states, such as Hungary, the Baltic countries, or even Ireland. In fact, Portugal's economic slowdown is in line with the macroeconomic situation of the Euro area, and the European Union in general (European Commission 2009a: 97): Portuguese GDP stagnated in 2008 and is expected to fall 3.75 percent in 2009, compared with a timid 0.8 percent EU growth in 2008 and a contraction forecast of 4 percent in both the EU and the Euro area in 2009; the Portuguese unemployment rate was 7.7 percent in 2008 and is expected to reach 9.1 percent in 2009, against 7 percent in 2008 and a 2009 forecast of 9.4 percent at the EU level (European Commission 2009a: 3–4).

What remains to be seen is whether the crisis of the Portuguese economy – a crisis initiated in the beginning of the century, which is to be explained by reasons fully detached from the 2008 global economic and financial crash, even if it was aggravated by the latter – can pave the way for the kind of structural adjustments that most of the industrial export sectors must accomplish. In fact, the combined effect of the Eastern enlargement and globalization showed up the exhaustion of the old industrial pattern of the Portuguese economy, based on cheap salaries and low-skilled workers. Furthermore, those industries were used to currency devaluations, which had worked for decades as the main tool to support their external competitiveness (Fontoura 2004: 79). If Portugal wants to catch up with the European Union countries, it is crucial for the government and for the economic sectors to look for a new industrial reorganization based on innovation and an increase in economic productivity and to concentrate on areas where it could benefit from its comparative advantages (Pereira 2008: 81). Otherwise, it would remain that ‘the big disappointment amongst the group [of catching-up states] was undoubtedly the marked deterioration in the outturn for the Portuguese economy, especially over the last decade, with its potential rates now pointing to divergence, rather than convergence, relative to the living standards in the rest of the Euro area’ (European Commission 2008: 115).

2. Rule of law

With the 1974 revolution and the transition to democracy that followed, Portugal moved to a pluralist political system inspired by the values of European democracies. With the adoption of the 1976 Constitution, Portugal took the route of a parliamentary democracy, which has since been consolidated. The democratic system of government is inspired by the principles of democratic elections, political freedom, human rights protection, and respect for the rule of law.

There is a direct relationship between the rule of law and liberal democracy. The rule of law is based on the principle that no one is above the law. Laws are for public knowledge and should apply equally to everyone. Public authorities accept that the law will be applied to their own action, and the government seeks to be law-abiding. Laws are to protect the political and civic rights and freedoms of the individuals, these being understood as their basic fundamental rights. The main institutions of the political system should act within the limits of the law and respect the boundaries of their own powers. Courts are impartial and not subject to any form of political pressure. Moreover, anyone accused of a crime has the right to a fair trial and is presumed innocent until proven guilty (Carothers 1998: 96).

The 1976 Constitution adopted a system of democratic power fully committed to the rule of law. This was particularly important given the fact that during the previous five decades the country had been ruled by an authoritarian regime that prevented the appearance of political parties and the organization of free elections, and denied citizens most of their basic political rights. The Salazar government also organized the existence of a political police and practised censorship of the press. In line with its repressive nature, it imposed political trials by the judiciary and it allowed for the detention of prisoners on political grounds, some of whom could be subjected to different forms of physical torture.⁴

The democratization process led to the adoption of an extensive bill of rights within the text of the national Constitution, as well as accession to the 1950 European Convention on Human Rights. Portugal also had to adopt important reforms in its legal system, mainly in those branches of law with a closer connection with the exercise of individual freedoms, such as criminal law and criminal law procedure.

With the accession to the European Communities, Portugal incorporated the *acquis communautaire* into its domestic law, which allowed for the adoption of a new economic law inspired by the principle of a market economy. Hence, the Portuguese legal order is, in formal terms, fully in

⁴ On political courts and political trials during the dictatorship, see Rosas (2009).

line with the legal requisites that support the existence of a liberal democracy and respect for the rule of law.

However, there are some dimensions of the Portuguese democracy that face a critical situation. The rule of law is, in all likelihood, the one where an idea of crisis is deeply entrenched in the common perception of the citizens (Santos *et al.* 2005: 334). Portugal faces an emergency in the area of justice. Indeed, there is a widespread feeling throughout the country regarding the existence of a dual system of justice, which critically affects the respect for the rule of law.

2.1. Dual system of justice

The crucial aspect of the crisis of justice concerns the idea that powerful people tend to receive different treatment within the scope of criminal legal proceedings. In fact, there is a prevalent feeling throughout the country that the upper classes benefit from advantageous behaviour regarding legal decisions taken in the framework of criminal judgements. Indeed, according to a recent study on the quality of Portuguese democracy, 82 percent of the people consider that rich citizens get better treatment from the judicial system than poor people (Magalhães 2009: 17).

In fact, there have been many public scandals concerning powerful people, which have been the object of large media coverage. These scandals have included a wide range of corruption cases, illegal financing of political parties (Sousa 2001: 159), insider trading, corporate fraud, traffic of influences, financial abuses, illegal stock exchange practices, money laundering, tax evasion and other different types of crime that went on for years in the courts and ended with decisions where the defendants were usually declared not guilty. By contrast, most individuals who have been jailed as a consequence of criminal sanctions belong to lower social classes.⁵ Hence, it seems that the so-called white collar class benefits more from the criminal legal order when compared with common people.

Bearing in mind that there could be different treatment in courts' decisions regarding criminal issues on the basis of social origins, it would be interesting to explore the reasons for such discrimination. At first glance, there is a seemingly natural explanation: rich and powerful persons can hire the best criminal lawyers and, as a consequence, they are able to get strategies of legal defence that common people cannot afford to pay for. This could be reasonable justification, and it also happens in other

5. As it is referred by Santos and Gomes, the vast majority of cases brought to court come from the so-called mass criminality, i.e., lower and medium criminal acts such as driving without a license or drunk driving (2002: 189).

European countries. It is clearly true in the sense that it explains part of the difference concerning legal results, but it does not exhaust the issue of discrimination.

Indeed, another reason is to be found in the very nature of the legal system. The transformation undergone by Portuguese law in the last decades – because of the new Constitution, the accession to the European Communities and other international commitments – has increased the complexity of the legal order (Ziller 2008: 29–31). In the case of criminal law and criminal law procedure there was a deep reform with a view to defending the legal status and the guarantees of the prosecuted. As a result of deep-seated transformations the complexity of the penal law system increased substantially, especially when it comes to its implementation (Transparency International 2009: 42). Judges and prosecutors have to deal with the complexity of the Portuguese legal system.

The purpose of guaranteeing the legal position of those taken to court allows for a large number of appeals to be taken during the course of a trial. As a consequence, the conclusion of a case tends to be severely delayed (Gomes 2003: 63). Very often appeals annul some written parts of the legal proceeding or the evidence produced during the court hearings on the grounds of formal aspects. Indeed, in the course of a case it is usual for the defendant lawyers to appeal against the evidence presented by prosecutors on the grounds of alleged unconstitutionality in the way it was produced. Moreover, some of the intermediary appeals could be the object of further appeals to higher levels of the judicial system. It should be noted that most of these legal incidents can also take place during the previous phases of the criminal inquiry conducted by a prosecutor, or during the criminal instruction oriented by a judge. That is to say that it could be hard for prosecutors or judges of criminal instruction to take someone to court whenever those indicted of some kind of criminal act are wealthy persons (Santos and Gomes 2002: 83).

Therefore, the protection of the legal status and the guarantees of the prosecuted goes well beyond what would be needed to ensure the right to a fair judgement. Indeed, the Portuguese criminal system has exacerbated the dimension of the guarantees up to a point where it is possible to block the normal development of criminal legal proceedings for those who can afford to pay expensive lawyers. In reality, in the balance between the guarantees of the prosecuted and the regular course of criminal legal actions, lawmakers took their concern with the former further than the limits of what is necessary. As a result, the Portuguese criminal system can be considered a ‘guarantistic’ legal order (Gomes 2003: 15–16), in the sense that it suffers from an excess of legal guarantees conferred on those indicted of a crime, and this jeopardizes the achievement of justice.

The legal incidents in the course of a trial due to formal aspects, the overcoming of legal delays caused by the statute of limitation, the multitude of intermediary appeals – all these aspects aggravate the complex task of the judges. However, it should be noted that the crisis of justice does not affect the criminal legal system only. Because of the peculiar effects that it produces, it also affects one of the foundations of the rule of law: the principle of equality (Magalhães 2009: 3).

Judges and prosecutors were trained at law schools and at the judiciary training centre within the paradigm of the Law System, that is to say, coherence and compatibility of the legal norms. Yet, the coherence of the legal system is threatened every day by the massive law production. As a result, judges and prosecutors look for ways of legal interpretation that conciliate the contradictory legal meanings stemming from a relentless law making power. Moreover, in the complexity of the legal system, the purpose of magistrates tends to be more oriented to the problem of legal interpretation than to the function of justice (Santos and Gomes 2002: 170). In reality, magistrates usually act more as managers of the legal system than as true actors of justice. The work of magistrates is seen by the other legal professions as a specialized job, which consists of finding the right norm or the right interpretation for different rules in the middle of the legal complexity. Hence, it deviates from the exercise of justice to the art of legal interpretation. On the work of managing law complexity, pressed by rampant lawyers permanently threatening with legal incidents, magistrates carry out the technocratic work of making the law disorder look coherent.⁶

It must be said that magistrates are the product of the legal environment. And the Portuguese legal environment favours a reductive role for judges and prosecutors. Indeed, judges need to have more procedural autonomy to conduct the due course of legal proceedings than the positive law allows them to have (Garoupa 2008: 6). However, it is not just the degree of procedural independence that magistrates need to acquire. They also need to take a different approach to the justice function. In reality, the dominant feature of their performance is the fact that they seem to be trapped by the legal system itself (Santos and Gomes 2002: 178). In searching for the rationality of the legal order, magistrates lose the goal of justice.

Hence, it is the whole legal culture that must be questioned. A legal system where public opinion is often confronted with cases showing obvious evidence of corruption (Sousa 2008: 10), tax evasion, or illicit financing of political parties and whose proceedings end with no criminal

6. A comparative analysis on judges' productivity can be found in Santos and Gomes (2005: 509–21).

sanction, is a system unable to fulfil its mission. It is a sound legal principle of any democratic society that it is better to have a guilty person go free than to have an innocent one jailed. But when people about whom there was serious evidence of wrong doing are systematically acquitted on the basis of merely formal reasons, there is a legal order that creates a sentiment of legal impunity.

It should be noted that there is some empirical evidence that common citizens fear the ability of the judicial system regarding conflict resolution due to technical issues. In fact, when asked whether judicial proceedings are so complicated that it is not worth taking a case to court, the majority of Portuguese people tend to give an affirmative answer (Magalhães 2009: 16). Hence, at the present time the complexity of the legal system cannot be separated from the evaluation of the global outcome of justice. This means a lack of trust in the capacity of judicial institutions to guarantee equal treatment for all citizens in the settlement of disputes.

Therefore, the problem of the Portuguese legal order is not one of lacking specific 'rules on the books'. Indeed, Portugal has a long legal thought tradition, with brilliant academics, famous Law Schools, a vast number of well remunerated magistrates and a judiciary training centre with a ratio of 10 candidates for each available position.⁷ In addition, it has a modern and sophisticated legal order, inspired by the best examples of the law systems of leading European countries, like Germany or France. Rather, the trouble seems to be the outcome of the legal order 'on the ground' (Kaufmann and Kray 2008: 2).

Indeed, the assessment of the legal system 'on the ground' is a disappointment.⁸ In some branches of law the labyrinth of procedural rules and practices tends to jeopardize a reasonable level of substantive law enforcement, with the criminal system seeming to challenge a crucial foundation of the rule of law: the principle of equality of all citizens. Given its discriminatory results on the basis of social reasons instead of conflict resolution, the legal order seems to increase the distance between powerful people and ordinary citizens. Therefore, it comes as no surprise that the above mentioned study on the quality of democracy reveals that 79 percent of the Portuguese people consider that the judicial system does not provide the same treatment for politicians and for common citizens (Magalhães 2009: 16). Additionally, the main actors in the area of justice seem captured by the legal order itself and tend to work as simple public

7. On judges and prosecutors' recruitment and training systems, see Santos, Gomes and Pedroso (2001: 48–61).

8. For instance, as far as the OECD Anti-Bribery Convention is concerned, Portugal was included in the group of countries that provided little or no enforcement of the same Convention. See Transparency International (2009: 10–13).

servants in the field of law with the mere goal of managing the legal system.

3. Education

It is well known that education plays a key role in the process of state modernization. Education plays a fundamental part in providing individuals with the knowledge, skills and competences needed for an active participation in society and in the economy. Education also contributes to an expansion of scientific and technological knowledge. The level of educational achievement of the population is commonly used to measure the stock of human capital, that is, the skills available in the population and labour force (OECD 2007a: 28). Therefore, there is a strict relationship between the educational system and the level of economic and social development of each society.

Education is a field where Portugal accumulated a historical lag when compared with other European countries. In the beginning of the twentieth century the country had an illiteracy rate of about 70 percent of the population. In 1974 the illiteracy rate was still above 30 percent. With the consolidation of democracy there was huge progress in all sectors of the educational system; the illiteracy rate fell to around 8 percent of the population, which mainly corresponded to the elderly sectors of the society. There was a massive expansion at all levels of the educational system, from pre-primary schools to higher education, with the offer of state education reaching the whole country. An example of this educational growth is the number of students attending higher education, which increased from just 26,000 in 1960 (Barreto 2003: 171) to 380,000 in the year 2008.⁹

Indeed, in the last decades there was a strong public investment in the field of education, with the construction of hundreds of primary and secondary schools throughout the country, as well as the establishment of a wide range of new higher education institutions.¹⁰ The priority given to the field of education within the framework of public policies can be seen as evidence of the making of the Portuguese welfare state, which was one

9. Gabinete de Planeamento, Estratégia, Avaliação e Relações Internacionais do Ministério da Ciência, Tecnologia e Ensino Superior. Available at: http://www.estatisticas.gpeari.mctes.pt/archive/doc/AlunosVagasDiplomados020708_capinscrito.svf.pdf

10. Public expenditure on education, as a percentage of total public expenditure, rose from 11.7 in 1995 to 12.6 in the year 2000. As a percentage of the GDP, public expenditure on education represented 5.1 percent in 1995, and 5.4 percent in the year 2000 (OECD 2008a: 262).

of the achievements of the twin processes of democratic consolidation and Europeanization.

Because Portugal privileged investment in the field of education, a growing amount of public money became devoted to education. In general terms, the amount of education expenditure as a percentage of GDP shows how a country prioritises education in relation to its overall allocation of resources. Taking into consideration 2005 data, Portugal allocated about 5.5 percent of its GDP to finance the global expenditures of the educational system, that is, all levels of education. When compared to other European Union countries, Portugal ranked among the top 10 positions of states' expenditure on education for the same year, ahead of countries like Germany, The Netherlands, Spain, Italy, and Ireland (OECD 2007a: 196).

Despite the proportion of national income being invested in education, Portugal remains among the lower ranks of the European Union countries as far as the age group¹¹ of people normally completing upper secondary programs is concerned. Indeed, the EU average of young people completing upper secondary education was about 85 percent in 2005, up from 80 percent in 1995. In Portugal the rate of completion of the upper secondary level for the same age group was just 53 percent in 2004 (OECD 2008b: 66). But what seems really disturbing is the fact that 10 years before, the rate of completion of upper secondary education in Portugal was 67 percent (OECD 2007a: 51).

Hence, it looks as if there is a problem of performance at the level of secondary education in Portugal: although the state made a strong investment regarding education in the last decades, and the global expenditure on education in percentage of the GDP is above the EU level, the completion rate of upper secondary programs is much lower than the European average.¹² Therefore, there is a paradoxical situation regarding the efficiency of the educational system in the sense that the government spends more money on the educational sector than the EU average, but that does not prevent the country from having the worst results amongst the 27 member states (European Commission 2009b: 243). Even when compared to OECD countries, Portugal ranks at the bottom of the scale, just above Turkey and Mexico.

11. The typical age group corresponds to the most common age at the end of the last school/academic year of the corresponding level and the program in which the degree is obtained (OECD 2008b: 66).
12. In the EU 78 percent of people aged 20–24 completed upper secondary education. In the Czech Republic, Poland, Slovenia and Slovakia this proportion rises to 90 percent. Only Malta (54.7 percent) and Portugal (53.4 percent) have a qualification rate of less than 60 percent (European Commission 2009b: 243).

Some of the reasons that could help to explain the low performance of the Portuguese system of secondary education are the huge rates of repetition, failure and early school leavers (Barreto 2003: 171). These rates could also explain the fact while the percentage of people of the age that normally frequent upper secondary education in Portugal is similar to that of other EU countries, Portugal has a lower performance when it comes to the completion rate for secondary education.¹³ Moreover, Portugal is the EU member state with the highest rates regarding the global percentage of people in all age groups who do not have at least an upper secondary education qualification,¹⁴ which is a sign of the comparative disadvantages that the country faces with regard to the goals to develop a European Union knowledge economy (European Commission 2005: 307).

3.1. Higher education

As far as higher education is concerned, Portugal is in a better situation in comparative terms. Indeed, the country has almost reached the EU average regarding tertiary graduate output, that is, the percentage of the population in the typical age cohort for higher education that follows and successfully completes tertiary programmes. From 1995 to 2005 Portugal went from a percentage of less than 20 percent of the age group of people normally completing tertiary programs to a rate of above 30 percent for the same age group (OECD 2007a: 54). This evolution was due to strong state investment in enlarging the network of public universities and community colleges, as well as to the dissemination of private universities and other types of higher education institutions. In the 2008 academic year there were almost 380,000 students enrolled in undergraduate programmes, with 75 percent in the public sector and the remaining part in private establishments.¹⁵

Despite the quantitative progress of higher education reached during the last decade, tertiary education faces some major problems. The main problem affecting the Portuguese system relates to the quality of the

13. However, the Government's strategy to upgrade competences, the so-called *Novas Oportunidades* program, should be noted. The first results are encouraging with an increase of young people enrolled in technical and professional courses at the secondary level, and strong demand of adults for lifelong learning (OECD 2008a: 11).

14. OECD (2008b: 43).

15. Gabinete de Planeamento, Estratégia, Avaliação e Relações Internacionais do Ministério da Ciência, Tecnologia e Ensino Superior. Available at: http://www.estatisticas.gpeari.mctes.pt/archive/doc/AlunosVagasDiplomados020708_capinscritosvf.pdf

institutions. One of the most recent devices to evaluate the quality of universities is the Shanghai ranking, which measures university performance across the world, based on different indicators of research success. The 2008 version of the academic ranking of the top 500 world universities includes just two Portuguese universities, which are placed in the group of the last 20 percent of universities considered (between 402 and 503).¹⁶ Similarly, no Portuguese institutions are included in the Top 100 list of best European universities.¹⁷ Hence, the Portuguese research universities need to increase their performance in order to make a stronger contribution to the economic growth of the country.

Several reasons could explain the low performance of the Portuguese higher education system. One of these relates to faculty and career development. It is well-known that inbreeding is a serious problem in many higher education systems. Inbreeding is considered to be an obstacle to academic mobility because it enables the worst practices of university endogamy. In some European states there is a long tradition of higher education institutions hiring from within the ranks of the same university (Aghion *et al.* 2008: 39). However, in Portugal inbreeding was more than an academic practice; it had an absolute legal cover, in the sense that was expressly promoted by the Statute of the university's teaching profession. Indeed, the law that regulated academic careers conferred teaching assistants the right to become faculty members once they obtained their PhD degree. Hence, the law established an automatic link between achievement of the doctorate and promotion to assistant professor.¹⁸

Because most teaching assistants used to do their doctorates at the same university where they worked, they were immediately promoted to a position of assistant professor. In reality, the large majority of faculty members of Portuguese universities entered as undergraduate students, moved to the graduate programme and became teaching assistants, and when they obtained their PhD degrees, directly initiated an academic career at the same university. Furthermore, the majority of them remained as professors at the same institution until the end of their academic life. In this context it should come as no surprise that the OECD considered that inbreeding in Portugal reaches the highest level among the European countries (OECD 2007b: 12).

16. Available at: [http://www.arwu.org/rank2008/ARWU2008_E\(EN\).htm](http://www.arwu.org/rank2008/ARWU2008_E(EN).htm)

17. Lisbon University and the University of Porto, the only ones mentioned by the Shanghai ranking, are in the position 169–210 of the regional rank (Europe). See: [http://www.arwu.org/rank2008/ARWU2008_E\(EN\).htm](http://www.arwu.org/rank2008/ARWU2008_E(EN).htm)

18. The law was first approved in 1980. Although the 2009 amendment law foresees that academic career starts at the level of assistant professor, it allows current teaching assistants to be automatically promoted to assistant professors if they obtain a PhD degree in 5 years.

Problems affecting faculty careers are not just confined to inbreeding. In an academic career that tends to develop from the beginning to the very end within the same institution, tenure procedure is the only moment where the university is allowed to assess the merit of assistant professors. Hence, tenure should be seen as an opportunity to select those with an acceptable research performance and a suitable teaching achievement. However, a brief look at data regarding tenure refusal shows that in the period between 1989 and 2004 there were surprisingly few cases of tenure rejection, with 50 denial decisions in the entire group of 15 public universities.¹⁹ In fact tenure, as well as other procedures of merit evaluation, is normally done by internal professors.

A further weakness that marks the Portuguese higher education system has to do with governance. Even if public academic institutions do not benefit from much autonomy in the sense that they are not financially independent, they cannot select their own students, they do not freely choose fee levels, and they cannot decide on remuneration issues, higher education establishments have a high degree of self-government. During the last decades university boards have been fully dominated by internal members, with faculty, teaching assistants, students and administrative personnel having complete control over the management of each institution. There was no room on the boards for any external members like alumni representatives, local authorities or independent counsellors (Aghion *et al.* 2008: 38).

Moreover, a large number of internal bodies absorbed the best energies of faculty members, but in the end they are unable to take decisions and implement them due to the overlapping powers of these bodies. The lack of clear leadership, the need to accommodate extensive consensus to carry out any reform, the inexistence of external representatives on the bodies, together with a strong endogamy that characterizes the academic career allowed the different structures of governance for a high degree of capture from the constituent's interests. In fact, in a framework of self-government rule, without any form of professional management, universities remained trapped by the multitude of interests associated with the election of its boards. Therefore, the question of governance is a central issue for the modernization of the academic institutions.

19. See: Gabinete de Planeamento, Estratégia, Avaliação e Relações Internacionais do Ministério da Ciência, Tecnologia e Ensino Superior. Available at: <http://www.estatisticas.gpeari.mctes.pt/archive/doc/RecProvimento.xls>. It is also interesting to note that in 2004 there were 6,945 PhD professors in those 15 public universities, but in 1993 there were just 3,232 PhD professors in those universities. Available at: http://www.estatisticas.gpeari.mctes.pt/archive/doc/Evol93_04Univ.xls

Portuguese higher education needs a system of governance that ensures more accountability and is able to define the achievement of strategic goals for the management of each university.²⁰

It should be noted that problems affecting Portuguese higher education are not limited to career development and governance issues. Indeed, there is a basic concern regarding the funding of higher education. Portugal is one of the EU countries that spend less on tertiary education and the expenditure has remained frozen in recent years. There is little hope that the government will substantially increase financial transfers to public universities in the medium term, due to the fiscal constraints stemming from the European Union (OECD 2007b: 12). Moreover, recent increases to university fees seem to have reached the critical balance between the fundamental right to accede to tertiary education and the price to pay for what is to be considered an investment in professional development. However, Portuguese higher education has a large margin to improve its teaching and research performances. If the academic career is to be deeply transformed, in order to prevent inbreeding and all forms of endogamy and to promote research merit and professional mobility, there must be a serious renewal of faculty, which will pave the way for hiring young researchers with PhD degrees from world class universities. In the same way, with a new governance structure universities would be able to define strategic development plans that would not be conditioned by corporatist and other types of protected interests.

4. Conclusion

In spite of the difficulties represented by the nature of the European accession, the Portuguese economy had a brilliant performance during the initial years of EU membership. However, the early golden period seemed to end with the adoption of the single currency, and since then Portugal has embarked on a process of economic divergence within the Euro area. Unlike the other cohesion countries that were able to fill the gap with the European Union average over the last decade, benefiting from a strong process of

20. A new law on university governance was adopted in 2007, and it has gradually been implemented in the universities' and schools' statutes. It establishes the presence of external members, along with a majority of members representing professors, students and workers, on the supervisory boards that elect university rectors and school presidents. The law also strengthens the powers of rectors and school presidents. This is a step forward for good governance in higher education. Nevertheless, it should be noted that even if the law foresees that the selection procedure for rectors and deans should be open to external candidates, these posts have been filled by their former rectors.

economic growth, Portugal is referred by the European Commission as the disappointing exception among the so-called catching-up countries.

The problems affecting the Europeanization of the country go well beyond the economy. In fact, in fundamental areas of state influence, such as justice or the educational system, Portugal is also diverging from the other EU countries. Education is a foundation of economic growth and development. The country needs to find a new industrial pattern based on innovation. For that its educational system must improve. Among the 27 member states, Portugal has the lowest rate of people completing upper secondary education. In addition, the quality of higher education poses a serious threat to the ability of the country to face the challenges posed by the EU new paradigm to create a European knowledge economy.

In the case of justice, the performance of the judicial branch of power also raises fears regarding the appropriate functioning of a democratic and fair society. In fact, it seems that there is a dual system of justice in Portugal, with powerful people being able to take advantage of redundant legal guarantees established by criminal law and criminal law procedure. The fact that in the framework of legal proceedings powerful people tend to escape from criminal sanctions could be understood as a violation of a basic dimension of the rule of law, insofar as it prevents the successful operation of the principle that laws should apply equally to every person and that no one is above the law. Moreover, it enables some fringes of the established elite to behave as if they benefit from a sort of legal impunity. This is truly damaging for the quality of democracy.

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