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PORTUGAL: AN INCOMPLETE EUROPEANIZATION

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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: Estado Portugal, Europeanization, rule of law, economic divergence, education

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Plan

Introduction

1. Economic divergence

2. Rule of law

2.1. Dual system of justice

3. Education

3.1. Higher education

Conclusion

Bibliographical references

Introduction¹

With accession to the European Union, a member state is required to incorporate the *acquis communautaire* into its domestic law, open its frontiers to the free movement of persons, goods and capital, adopt the Euro as the single currency, and fully participate in the Union's political process, which extends from all areas of economic integration to some fields of justice and home affairs, as well as the making of a European foreign policy.

Despite the limits of EU jurisdiction and the consequences for the division of competences between the Union and the member states, 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, which aims to establish tertiary education systems where academic degrees and quality standards are closer and comparable throughout Europe. In fact, 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. This development is also derived from the common cultural heritage and the existence of shared political values, such as democracy, freedom, human rights, rule of law, and social state. Hence, we arrive at the idea of Europeanization as a concept that derives from the process of European construction, but has a larger scope than the EU because it is the outcome of

¹ An earlier version of this paper was presented at the 2008 American Political Science Association Annual Meeting. I am indebted to Professor Ann Henshall for very helpful linguistic revision of the article. The usual disclaimer applies.

a complex set of factors like economic interdependence, citizenship, cultural exchanges, civil society connections, fundamental rights protection, 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 accession to the European Union. 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. Indeed, regardless of the huge domestic transformations that have occurred since the advent of democracy, it must be remembered that European countries – in particular Eastern Europe – are also engaged in a continuous process of change and reform, and this tends to accentuate important Portuguese peculiarities within the European context.

This paper aims to explore Portugal's performance in some crucial 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 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% of the average European Community GDP of 12 member states. In 2008, the Portuguese GDP is 66% 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 modernisation that swept across the country in the last two decades. This was mainly favoured by European integration.

However, it should be noted that in 2001 Portugal had reached 75% of the European Union GDP of 15 member states. Since then the relative income of the country has stalled at just 66% 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 till 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 structural funds. The European funds allowed for a deep-seated transformation of the physical infra-structures of the country. In particular, the motorway roads system grew from just a couple of hundreds of kilometres before accession to a huge motorway network, which has been reinforced by 2500 km of recent roads. The modernisation of infra-structures 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. Indeed, if during the first 15 years of European accession, the Portuguese income came closer to that of the 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.

What are the major reasons for this path of divergence with the European Union in the second period? It is considered that the main explanation for the Portuguese slowdown in economic growth was accession to the monetary union. The adoption of the single currency could be considered the turning point regarding the Portuguese economic performance. 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 Community institutions as a model for Eastern candidate countries, due to the success achieved in that period. But ten years later Portugal had become a warning example to other European Union countries in the process of joining the Euro (Abreu, 2006: 5).

In its Report on the successes and challenges after 10 years of monetary union, the European Commission aims to demonstrate that the single currency has been a driver for real economic convergence. It notes that the so-called cohesion countries - Spain, Ireland, Greece and Portugal – gained from the monetary union to benefit from a strong process of growth. Indeed, in 1999 the level of GDP per capita in Greece, Spain and Portugal were, respectively, 71, 84 and 68% of the Euro area average. In 2008 Greece and Spain have further shortened the difference, with 90 and 94% of the Euro countries' average, respectively. By contrast, Portugal's level of GDP per capita has decreased to 64%. 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).

The Portuguese downshift in economic terms is even more disturbing when it is compared with the countries that recently acceded to the monetary union. From 1999 to 2008 Slovenia's and Cyprus's per capita income level passed from 70 and 77% to 84 and 83% of the Euro area average, respectively. Moreover, it should be noted that over the last ten years the GDP per capita level of the other EU new member states has grown in relative terms by about 30 points in the Baltic countries and by 17 points in the Czech Republic and Slovakia.

One of the reasons that could help explain the poor performance of the Portuguese economy lies the different behaviour of fiscal policy in the so-called cohesion countries in the last ten years. Ireland and Spain both have budget surpluses, and Greece reduced its public deficit to the monetary union red line of below 3%. During the period concerned Portugal was above 3% for most of the time, and it even peaked at 6% in 2005. Since then the Portuguese public deficit has been drastically reduced to below 3% (European Commission, 2008: 110).

As far as the public sector size is concerned, the total of expenditures in GDP was reduced in Spain and Greece during the last ten 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. 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 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). As a result of fiscal policy consolidation measures, public debt levels as a share of GDP have declined significantly in Ireland, Greece and Spain in the last decade, but they have risen by about 13 points in Portugal (European Commission, 2008: 111).

The divergent performance of the Portuguese economy can be further explained by a set of elements. Beyond fiscal policy grounds, where Portugal provides a striking contrast with the other cohesion countries, 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 parity of Portuguese escudo with the Euro was fixed at about 200; the parity of Spanish peseta was fixed at about 166. However, in the early 1990s 128 Spanish pesetas were equivalent to 1 Euro, while 179 Portuguese escudos were equivalent to 1 Euro. This means that the Spanish currency underwent a devaluation of about 30% in the period concerned whereas the Portuguese currency devalued only 12% in the same period. Moreover, due to fast wage increases, the real effective exchange rate appreciated by about 15% in Portugal during the 1990s, while it depreciated by the same amount in Spain for the same period. 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% higher This helps to understand Portugal's stronger loss of economic competitiveness when compared to Spain (European Commission, 2008: 113).²

The actual 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. Moreover, even if fiscal policy is still formally part of member states' jurisdiction, this is an area where 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).

An additional explanation for the difficult situation of the Portuguese economy is to be found in its specialization model. 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 globalisation and to the entry of large low-wage countries in the world trade system, like India and China, as well as to the end of particular protectionist regimes such the Multi-fibres Agreement. 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 world elements substantially eroded the competitiveness of core Portuguese export sectors (Soares, 2007: 472).

What remains to be seen is whether the current crisis of the Portuguese economy 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, the following situation will remain: "the big disappointment amongst the group [of catching-up states] was undoubtedly the marked

² 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--38).

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 Western 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). Therefore, the rule of law is strictly related to the principles of legality of state action, equality of all citizens, human rights protection, separation of powers, judicial independence, as well as the presumption of innocence, no punishment without a previous penal law and *habeas corpus*.

The 1976 Portuguese 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 and civic 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 existence of prisoners on political grounds, some of whom could be subjected to different forms of physical torture.

The democratization process led to the adoption of an extensive bill of rights within the text of the national Constitution, as well as to the accession to the 1950 European Convention on Human Rights. As a consequence of the new democratic legal framework, 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.

Portugal also adopted a set of legal reforms in others branches of law, in line with the principles of the democratic Constitution, such as gender equality. Moreover, with the accession to the European Communities, in 1986, Portugal incorporated the *acquis communautaire* into its domestic law, which allowed for the adoption of a new economic law inspired by the principles of a market economy and free competition. Hence, the Portuguese legal order is, in formal terms, fully in 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 clearly 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. Indeed, Portugal faces an emergency in the area of justice. The main dimensions of this crisis are related to the performance of the judicial power: on the one hand, courts are overburdened with legal proceedings and they very often extend the time used to deliver a legal decision beyond what would be reasonably acceptable for the achievement of justice; on the other hand, there is a widespread feeling throughout the country regarding the existence of a dual system of justice. It is the latter dimension of this crisis of the judicial system that critically affects the respect for the rule of law insofar as there is a public awareness that powerful people tend to benefit from a high level of immunity whenever they are taken to court within the scope of criminal legal proceedings.

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 upper classes benefit from advantageous behaviour regarding legal decisions taken in the framework of criminal judgements. Indeed, 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), inside trading, corporate fraud, traffic of influences, financial abuses, illegal stock exchange practices, money laundering, tax evasion, sexual abuse, 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. 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 can't afford to pay for. This could be reasonable justification, and it also happens in other 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. It should be remembered that the Portuguese legal order is part of, and inspired by the continental law systems. Continental law has evolved in the last two centuries with the inspiration of strong schools of legal thought that favoured a formalist approach to law and the legal system. With the democratic consolidation, Portugal adopted its domestic legal order in accordance with the new principles established by the 1976 Constitution and with the requirements stemming from the international conventions signed by the state. However, the transformation that marks the Portuguese law of 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).

It must be said that criminal law and criminal law procedure were deeply reformed with a view to defending the legal status and the guarantees of the prosecuted, taking into consideration the principles established by the Constitution and other international agreements. Nor should the abuses that occurred in the area of criminal law during the long-lasting political dictatorship that ended with the 1974 Revolution be forgotten. Most of the reforms since then have been inspired by the so-called comparative law, mainly continental law. As a result of deep-seated transformations in the field of criminal law and criminal law procedure, the complexity of the penal law system increased substantially, especially when it comes to its implementation. It is for judges to apply the law. In the case of criminal actions, the Public Ministry has the monopoly of legal accusation, which is exercised through a vast number of prosecutors.

It is the judges and prosecutors who have to deal with the complexity of the Portuguese legal system. It should be noted that the purpose of guaranteeing the legal position of those taken to court allows for a substantial number of appeals to be taken during the course of a trial. As a consequence of the appeals as well as the decisions taken on the basis of those appeals, the conclusion of a case tends to be severely delayed. 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 of or illegality 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, with inconvenient effects for the due course of the legal proceeding. 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.

Therefore, the concern aimed at 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 of those taken to court. Indeed, the Portuguese criminal system has exacerbated the dimension of the guarantees up to a point where it is almost possible to block the due course of criminal investigations or 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. That is the reason why the Portuguese criminal system can be considered as a “guarantistic” legal order, in the sense that it suffers from an excess of legal guarantees conferred on those indicted of a crime, and this jeopardises 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 various defendant strategies aimed to retard the path of legal proceedings, the multitude of intermediary appeals - all these aspects aggravate the complex task of the judges in the implementation of the law. 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. The crisis of justice is larger in scope; it extends to the areas of civil and administrative law. In reality, even if the social discrimination that marks the results produced within the criminal legal area are not so strongly perceived in civil or administrative jurisdictions, it does not mean that those branches of law remain unaffected by similar problems stemming from the complexity of the legal order.

One of the main reasons for the complexity of the legal system is the inflation of laws, decree-laws, regulations and all sorts of normative acts that compose the national legal order. The intended rationality of the legal system with its basis in the movement of legal codification no longer guides the work of Portuguese lawmakers or the agencies with rule-making power. Hence, there is an unstoppable number of legal acts whose aim is to regulate all forms of social behaviour. It is for the courts to ensure the adequate implementation of the law.

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 emanating from public authorities. 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. In reality, magistrates usually act more as managers of the legal system than as true actors of justice. In the legal arena

the meaning of the justice function tends to be centred on law interpretation. 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. In reality, the essence of their jobs is actually closer to legal engineering than to achieving justice.

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. 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 clear evidence of corruption (Sousa, 2008: 10), mismanagement of public goods, tax evasion, or illicit financing of political parties and whose proceedings end, merely on the basis of legal technicalities, with no criminal sanction for those indicted after a long criminal investigation - is a legal system that is 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.

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 in several branches of law, famous Law Schools, a wide production of legal literature, a vast number of well remunerated magistrates and an advanced judiciary training centre with a ratio of 10 candidates for each available position of magistrate. In addition, it has a modern and sophisticated legal order, inspired by the best examples of the law systems of leading European countries, like German, France or Italy. 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 failure. The system of justice works inefficiently in the sense that courts are overburdened with legal proceedings, despite some

recent improvements concerning the extent of judicial caseload.³ Moreover, the criminal system seems to challenge a basic foundation of the rule of law, the principle of equality of all citizens. In fact, 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. Additionally, the fundamental actors in the area of justice seem captured by the legal order itself and tend to work as simple public servants in the field of law with the mere goal of managing the legal system through a labyrinth composed of a huge array of different laws and procedures, often contradictory in meaning.

3. Education

It is well known that education plays a key role in the process of state modernization. A well-educated and trained population is essential for the social and economic wellbeing of countries and individuals. 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 retard when compared with other European countries. Indeed the general spread of a public education system had to wait until the rise of the Republic, in 1910. In the beginning of the 20th century the country had an illiteracy rate of about 70% of the population. In 1974 the illiteracy rate was still above 30%, which is indicative of the low priority that the dictatorship gave to this issue. With the consolidation of democracy there was huge progress in all sectors of the educational system; the illiteracy rate fell to around 8% of the population, which mainly corresponded to the elderly sectors of the society. In fact, 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 to 400,000 in the year 2000 (Barreto, 2003: 171).

3 Ministry of Justice, “Movimento de Processos nos Tribunais Judiciais de 1^a Instância, segundo a espécie, por tribunal (2006)”, available at: http://www.dgpj.mj.pt/sections/estatisticas-da-justica/informacao-estatistica/anexos/processos-segundo-a-area/downloadFile/file/TotalProcessos_AreaProcessual_2006.pdf?nocache=1207559837.08.

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. Along with the building of new schools, there was also renovation of the older structures and widespread dissemination of equipment for the new technologies at all educational levels. There was also a vast increase in the appointment of school and university professors and significant enhancement of their salary conditions. 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 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% of its GDP to finance the global expenditures of the educational system, that is, all levels of education. It should be said that the OECD countries' average expenditure on education was 6.2% of the share of the national income, for the same year. But when compared to other European Union countries, Portugal ranked among the top ten positions of states' expenditure on education, ahead of countries like Germany, Netherlands, Spain, Italy, or Ireland (OECD, 2007a: 196). Hence, education can be considered a main area of public policy for the government, not just at the level of political rhetoric, but also in the allocation of public money.

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 group of people normally completing upper secondary programs is concerned. Indeed, the EU average of young people completing upper secondary education was about 85% in 2005, up from 80% in 1995. In Portugal the rate of completion of the upper secondary level for the same age group was just 55% in 2004. But what seems really disturbing is the fact that ten years before, the rate of completion of upper secondary education in Portugal was almost 70%. It should be noted that in the same period of time the proportion of students who graduated from upper secondary programmes progressed by 7 percentage points on average in OECD states, and in countries such as Finland, Germany, Greece, Ireland, graduation rates equalled or exceeded 90% (OECD, 2007a: 42).

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 in human and physical resources 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. 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, as far as the completion of upper secondary is concerned. Even when compared to OECD countries, Portugal ranks at the bottom of the scale, just above Turkey and Mexico.

Some of the reasons that could help to understand 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. 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, 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% of the age group of people normally completing tertiary programs to a rate of above 30% for the same age group (OECD, 2007a: 54), which was a remarkable evolution. 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% in the public sector and the remaining part in private establishments.⁴

Despite the quantitative progress of higher education reached during the last decade, tertiary education faces some major problems. It is well known that the economic growth of a country is closely linked to the state of innovation and the system of higher education. It is not by chance that

⁴ 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

the world's best universities tend to be located in the most advanced countries, such as the United States or in some European countries.

The main problem affecting the Portuguese system of higher education relates to quality of the institutions. Given that the universities of excellence are research universities, the quality of universities is to be measured by their research performance. 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 2007 version of the academic ranking of the Top 500 world universities, organized by the Institute of Higher Education of Shanghai, includes just two Portuguese universities, which are placed in the group of the last 20% of universities considered (between 403-510).⁵ Similarly, no Portuguese institutions are included in the Top 100 list of European best universities. Hence, the Portuguese research universities need to increase their performance in order to make a stronger contribution to the economic growth of the country and to achieve a better position in international rankings of universities.

Several reasons could explain the low performance of the Portuguese higher education system. Most of the problems are not exclusive to the national system, but also affect other European countries, although on a different scale. However, there are some aspects where the Portuguese case has extreme features. 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, in particular in small and medium-sized countries, 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 is more than an academic practice; it has an absolute legal cover, in the sense that is expressly promoted by the Statute of the university's teaching profession. Indeed, the law that regulates academic careers confers teaching assistants the right to become faculty members once they obtain their PhD degree. Hence, the law establishes an automatic link between achievement of the doctorate and promotion to the position of assistant professor.

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 from the moment they completed the PhD degree. In reality, the large majority of faculty members of Portuguese universities entered as students in a certain academic institution for undergraduate studies, 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

⁵ Available at: <http://www.arwu.org/rank/2007/ARWU2007TOP500list.htm>

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).

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 who have been promoted to the academic career by the effect of the law. 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.⁶ In fact tenure, as well as other procedures of merit evaluation, is normally done by inside professors, in an academic atmosphere that has not been oriented to promote professional merit or favour mobility.

The academic career is still very influenced by a civil servant mentality. Indeed, there is also a strict egalitarian policy in salary matters. Academic wages in public universities are determined by the government, and this does not allow any flexibility for the universities to compete for the best academics. In fact, professors throughout the country receive equal pay for the same academic position, regardless of whether they belong to a teaching institution with a negative assessment and located in a remote area, or whether they are leading academics in their field of studies and members of the best national research university.

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 is 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 absorb the best energies of faculty members, but in the end they are unable to take decisions and implement them due to the overlapping functions of

6 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 6945 PhD professors in those 15 public universities, but in 1993 there were just 3232 PhD professors in those universities. Available at: http://www.estatisticas.gpeari.mctes.pt/archive/doc/Evol93_04Univ.xls

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 an entire set of bodies. Therefore, the question of governance is a central issue for the modernization of the academic institutions. 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.

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 spends less on tertiary education and expenditure on higher education has remained frozen in recent years. There is little hope that government will substantially increase financial transfers to public universities and community colleges in the medium term, due to the fiscal constraints stemming from the European monetary 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 reformed, 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.

Conclusion

For a country that had spent the previous five centuries mainly focused on its colonial possessions, the accession to the European Union was a major challenge for Portugal's external policy and economic relations. The decision to join the Union was preceded by a long route of democratic consolidation that is firmly linked with the course of Europeanization. However, the process of closing the gap with the EU member states had a different starting point when compared with other European countries. Indeed, the education skills of the Portuguese people lagged behind the European average, including those of the Eastern countries, and Portugal had always been one of the poorest countries of the continent.

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 clear 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 economic growth, Portugal is referred by the European Commission as the disappointing exception among the so-called catching-up countries. The situation tends to be even more disturbing when a comparison is made with the Eastern countries' economic performance, as well as with the perspective of Portugal being continuously surpassed by those states in the Union's GDP ranking.

The problems affecting the Europeanization of the country go well beyond the economy. In fact, in fundamental areas of state action, such as justice or the educational system, Portugal is also diverging from the other EU countries, despite devoting an identical percentage of the national income to those areas. 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 important 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 democracy.

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