



Editorial

In recent months Europe has been confronted with a new phase of the barbarity of war, namely the destruction of its critical infrastructure in order to deprive Ukrainians of what is indispensable for their survival – energy, water, heating – which is why the European Parliament has recognised Russia as a State sponsoring terrorism and using terrorist means. In a resolution issued on 23 November 2022, the democratically elected representatives of European citizens state unreservedly that the atrocities deliberately perpetrated by Russia against the civilian population of Ukraine, as well as the destruction of civilian infrastructure and other serious violations of human rights, are acts of terrorism against the Ukrainian population and constitute war crimes.¹

Almost ten months after the Ukrainian martyrdom, there is a growing conviction that if Ukraine capitulates in this war, the EU as we know it will cease to exist. This must be clearly admitted by European leaders, so that citizens understand exactly what is happening to all of us. The EU has taken sides in this war – and rightly so, it could not be expected to do otherwise, given the values it proclaims. Hence, EU's credibility on the international stage also plays out on the Ukrainian battlefield. If the EU allows Ukraine to capitulate before the invader, the EU's influence in the world is undermined – its values, its law, its institutions. Consequently, the European integration we know vanishes.

Thus, it is the role of Academia – and scholars in general – to engage in efforts to prevent the destruction of Europe's moral and intellectual infrastructure, always with a view to safeguarding the most precious Western legal-political legacy: rule of law, democracy, and human rights. This is why this issue of UNIO begins precisely with a text on the theme of authoritarianism which casts a shadow over democratic societies.

Patrícia Fernandes' paper, entitled "*A post-factual society*", aims to address this problem adopting a philosophic-political approach. The liberal democracy was developed from the conviction that, albeit our different opinions concerning political values, one's discussion would be confined by facts that were not disputable. That

¹ European Parliament resolution of 23 November 2022 on recognising the Russian Federation as a state sponsor of terrorism, [2022/2896(RSP)]. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0405_EN.html.

old world seems to have disappeared as a new period emerges since the 1960s, usually referred to as postmodernity. Can democracies survive the assault on truth, science, and the very idea of fact? Or are Western societies condemned to the next stage of government, according to Plato: authoritarianism?

Along this line, Dimitris Liakopoulos' text, entitled "*Polexit v. European Union*" (updated up until February 2022), is based on the historical course of the Polish crisis that lasted more than seven years, culminating in the Polish Constitutional Court's ruling of 7 October 2021. This, in turn, paved the way for Poland's exit from the Union as well as the discussion of several open legal issues – from the rule of law and the Union's values to the first considerations for the future of European integration.

The next contribution of this UNIO issue is authored by Iva Guterres and entitled "*Enforcing Environmental Policy – the role of the European Union*". It explores the EU leadership in environmental policy, with several legal initiatives underway, such as the proposed "Directive of a Carbon Border Adjustment Mechanism" (CBAM). Nonetheless, the EU is struggling with difficulties regarding the effectiveness of legal measures, in particular carbon leakage problems. As the EU has played a unique and strong role in climate policy enforcement, the aim of this paper is to present this policy option, which imposes coercive environmental tax policies on other countries, in light of the upcoming CBAM.

In the following work, entitled "*Environmental human rights defenders, the rule of law and the human right to a healthy, clean, and sustainable environment: last trends and challenges*", Núria Saura-Freixes explores the latest developments in legal and institutional guarantees for environmental defenders. Recently, the UN General Assembly has recognised the universality of the human right to a healthy, clean and sustainable environment. However, for decades, environmental human rights defenders have struggled for this right and have paid a high price for it: threats, reprisals, penalisation, and even their lives. The author argues that the new UN resolution must be considered not a final goal, but a step towards a necessary binding instrument that recognises the universality of the human right to a healthy environment. This lack of a legal binding framework endangers the action of environmental defenders when they fight against projects and decisions which undermine their right to a healthy environment.

Further along the same path of human rights protection, Joana Gomes Beirão, with the text entitled "*The EU's accession to the ECHR and the Dublin Regulation: is accession still desirable?*", addresses whether such accession is still possible and desirable considering Opinion 2/13, as well as the caselaw of the Court of Justice of the European Union and the European Court of Human Rights on the application of the Dublin Regulation. The author argues that accession is still possible, although negotiations on an accession agreement compliant with the conditions imposed by Opinion 2/13 may prove particularly difficult in practice. Additionally, she argues that accession is desirable if the principle of mutual trust is not upheld over human rights, since accession in these conditions would enhance human rights protection in the context of the application of the Dublin Regulation.

Focusing on more concrete dimensions of fundamental rights protection in the EU, Elaine Dewhurst presents a paper entitled "*«In delay there lies no plenty»: overcoming the age-based obstacles, omissions and inconsistencies in the 2008 Proposed Council Directive on Equal Treatment*". This directive has been in preparation since 2008 but has been plagued by concerns over subsidiarity and legal certainty. The author explores obstacles in the context of financial services (including insurance and banking), omissions

with respect to multiple and intersectional discrimination, exclusions and artificial intelligence, and inconsistencies such as justifying only preferential differences of treatment on grounds of age, a departure from other anti-discrimination law within the EU. By identifying solutions to these impasses, this article hopes to play a small role in overcoming these challenges and charting a clear path for the implementation of the proposed Directive.

Regarding matters related to ageing, Maria Inês Costa elaborates on how concerns about intergenerational solidarity and social sustainability are gaining prominence – the cornerstones of the life-cycle approach embodied in the “European Commission’s Green Paper on Ageing: Fostering solidarity and responsibility between generations”, published in 2021. With a paper entitled “*Demographic ageing and vulnerability in the European Union: a brief analysis of the challenges and opportunities it poses*”, the author explores the notion of vulnerability associated with the elderly, essentially addressing the extent to which it can be applied uniformly to this group, and briefly evaluates the concept of vulnerability in light of emerging theories that render it as a universal aspect of human life.

Next, with the paper entitled “*Directive 2020/1828 on representative actions for the protection of the collective interests of consumers: an overview*”, Diego Agulló Agulló explores the goal of this legislation, i.e., i) to favour consumers’ access to justice in scenarios of mass damage, and ii) to deter future wrongdoings harmful to consumers by companies operating in the EU. The author addresses the aspects related to legal standing in national and “cross-border” representative actions, the subjective scope of protection, the opt-in and opt-out mechanisms, the nature of the claim, the relationship between the representative action and other subsequent actions, the supervision of the financing of representative actions by third parties, the possibility of settlement agreements and the information and publicity of representative actions.

This issue ends with the contribution of Ricardo de Macedo Menna Barreto under the subject “*Humanistic legal sciences: notes for a rescue on fundamental research in law*”. This paper addresses the displacement, reduction or exclusion of humanistic legal sciences from the teaching plans of Law Courses, which has been creating a scenario of “epistemological sterility”. When not excluded, these sciences are attacked or are the object of disregard by many practising lawyers and students, who unthinkingly and blindly reproduce a posture of overvaluing dogmatic-legal knowledge to the detriment of legal-humanistic knowledge.

The Editorial Team