



## **(Neo-)fascisms and the “fabrication of negative alterities”:<sup>1</sup> contributions to the updating of the constitutional prohibition of fascist organisations in light of the structuring principles of the Portuguese legal system**

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*ABSTRACT: This article will aim to explore the new far-right movements following the prohibition of organisations that follow the fascist ideology that the Portuguese Constitution outlaws, based on a characteristic that we will argue is common to the far-right and, a fortiori, to fascisms throughout their existence. That is the discrimination and persecution of people belonging to social groups with a history of oppression due to characteristics that make up their identities – we will call them identity minorities. First of all, we will try to analyse the relationship between the new far-right movements and the classical fascisms, to which the aforementioned prohibition is mainly associated. Having established this connection, we will seek to base our point of view on the incompatibility between the contemporary far-right and the founding principles of the Portuguese legal system and of the process of European integration, not ignoring, with the support of the works of Jorge Reis Novais, Charles Taylor, Emmanuel Levinas and Paul Ricœur, the demand for respect for the otherness of the Other that guides those two political and legal projects.*

*KEYWORDS: Fascism – contemporary far-right – identity minorities – principle of human dignity – fundamental rights.*

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<sup>1</sup> It is Enzo Traverso who uses this expression: Enzo Traverso, “Spectres du fascisme/Les métamorphoses des droites radicales au xxie siècle”, *Revue du Crieur*, no. 1 (2015): 111, doi:10.3917/crieu.001.0104.

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## Introduction

Since the turn of the century, and especially in the last decade, the far-right has acquired a centrality that only finds a parallel in the 1920s and 1930s.<sup>2</sup> For this reason, it is necessary to understand the new far-right movements and find strategies to deal with them.

Considering that fascism corresponds to the most extreme point of the far-right and, at the same time, the point where we find its ideological core, it is inevitable, when we bring this discussion to the Portuguese context, to mention Article 46(4) of the Portuguese Constitution, which establishes that organisations that follow the fascist ideology are not allowed.

The mentioned norm does not have a temporal scope limited to the period of consolidation of the Portuguese democracy, but it cannot be detached from the history of the constitutional text and the context that influenced it, and, for that reason, does not fail to have its starting point in the authoritarian regime overthrown by the revolution of April 25, 1974, the *Estado Novo*. The characterisation of fascist ideology carried out at the infra-constitutional level, by Law no. 64/78, of 6 October, namely in its Article 3, is not exhaustive. The objective of this Article is, therefore, within the margin of free interpretation that that characterisation authorises, to find a point of contact between the fascism of the past, from which the previously mentioned constitutional prohibition starts, and the new far-right movements, possibly guided by a contemporary fascism.

The point of contact chosen here from among several corresponds to a characteristic that stands out in particular in the far-right of the present. It is the discrimination and persecution of people belonging to social groups with a history of oppression and silencing because of certain characteristics that make up their identities – we will call them identity minorities.

This way, in addition to seeking to understand more deeply the concept of identity, as well as the way in which it is constructed and affirmed, and also thus understanding the true extent of that persecution and the violations of the fundamental rights of those targeted, we propose to demonstrate the incompatibility between, on the one hand, the far-right and fascism, whether those of the past, or those of the present, and, on the other hand, the structuring principles of the political and legal community – and we highlight here the expression “*community*” – instituted by the Portuguese Constitution as well as of the integration process carried out by the European Union (EU). Before that, we will dedicate ourselves to the interpretation of the earlier mentioned constitutional prohibition and, in particular, the “*fascist ideology*” that it has as its object; we will characterise the new far-right movements; we will try to understand if – and how – they can, when a certain set of characteristics is met, be considered neo-fascisms, that is, fascisms adapted to the particularities of the twenty-first century, and, in this way, be covered by the prohibition of organisations that follow the fascist ideology; and we will examine the persecution, throughout history, but especially in the present, by (neo-)fascisms of individuals who we can fit into identity minorities.

With all this, we believe that we have sufficient grounds to offer a new perspective from which the legitimacy of Article 46(4) of the Portuguese Constitution

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<sup>2</sup> Cas Mudde, *O Regresso da ultradireita/Da direita radical à direita extremista*, trans. Teresa Toldy and Marian Toldy (Lisbon: Editorial Presença, 2020), 15, 31-32.

can be conceived, as well as a new interpretative path that can be followed when its application is considered. Since these are general principles of the EU and therefore of its Member States, we also believe that the reasoning followed here may be useful to these States and to the institutions of the EU in the consideration they have to make regarding possible solutions to deal with the growth of the far-right that we have been witnessing and with the radicalisation of politics that has resulted from it.

## 1. The Portuguese Constitution's ban on organisations that follow fascist ideology – introductory notes

Article 46(4) of the Portuguese Constitution establishes that organisations that follow the fascist ideology are not permitted. This prohibition is reaffirmed in Article 8 of the Law on Political Parties, Organic Law no. 2/2003, of 22 August. Let us begin, then, by analysing the outlines of this ban.

Firstly, Law no. 64/78, of 6 October, which regulates the final segment of Article 46(4) of the Portuguese Constitution, explains to us, in its Articles 4 and 5, that the prohibition implies, after the declaration by the Constitutional Court (see Article 10 of its Organic Law, Law no. 28/82, of 15 November) that a given organisation follows the fascist ideology: 1) its declaration of extinction and the prohibition of carrying out, by itself or through its members, any activity; 2) the loss of their assets to the State; and 3) the criminal responsibility of their leaders and their members who have participated in violent actions (Article 3 of Law no. 64/78).

Secondly, Article 46(4) of the Portuguese Constitution refers to “*organisations*.” Therefore, more than associations, as is apparent from the insertion of the rule under analysis in Article 46, which provides for freedom of association, and more than political parties, which, due to their centrality in the mode of operation of contemporary representative liberal democracies,<sup>3</sup> constitute a privileged type of association, any and all organisational structures that are dedicated to acting in accordance with, or to spread, fascist ideals are covered by the prohibition.<sup>4</sup>

Thirdly, it should be noted that the aforementioned prohibition is intended only for fascism in an organised form, and not for the freedom of expression of that political ideology,<sup>5</sup> so that, with Article 46(4), the Portuguese Constitution does not create any type of crime of opinion.<sup>6</sup>

And, finally, what does it mean to support fascist ideology? Law No. 64/78 also offers us an answer to this question, in its Article 3: “[...] *organisations are considered to follow the fascist ideology when, by virtue of their statutes, manifestos and statements, declarations of their leaders or officials, or by their actions, show that they adopt, defend, intend to disseminate or effectively disseminate the values, principles, exponents, institutions and methods characteristic of fascist regimes that history records [...]*.”

<sup>3</sup> Portuguese Constitutional Court Judgment No. 304/2003, quoted in Jorge Miranda, “Anotação ao Artigo 51.º”, in *Constituição Portuguesa Anotada/Volume I*, Jorge Miranda and Rui Medeiros (Lisbon: Universidade Católica Editora, 2017), 733-734. See also J.J. Gomes Canotilho and Vital Moreira, *Constituição da República Portuguesa Anotada/Volume I* (Coimbra Editora, 2014), 682.

<sup>4</sup> Gomes Canotilho and Moreira, *Constituição da República Portuguesa Anotada*, 649.

<sup>5</sup> Jorge Miranda, “Anotação ao Artigo 46.º”, in *Constituição Portuguesa Anotada/Volume I*, Jorge Miranda and Rui Medeiros (Lisbon: Universidade Católica Editora, 2017), 695.

<sup>6</sup> Gomes Canotilho and Moreira, *Constituição da República Portuguesa Anotada*, 648-649.

## 2. The definition of “fascist ideology”, of fascism

### 2.1. Preliminary thoughts

As we have already mentioned, the constitutional norm around which this article revolves determines that organisations that follow *the fascist ideology* are not allowed. We will now turn to the meaning of the highlighted expression. We inform you in advance that there are two main concerns that guide our attempt to approach a definition of “*fascism*” – we will mention them in due course.

The first point that we have to pay attention to in order to better understand the use of the expression “*fascist*” in the Portuguese Constitution is that this use has as an important reference the dictatorial political regime that preceded the liberal-democratic constitutional order of 1976, the Estado Novo.<sup>7</sup> This is confirmed by the first paragraph of the Preamble to the Constitution – “*On April 25, 1974, the Armed Forces Movement, (...) overthrew the fascist regime*” – and is widely accepted.<sup>8</sup>

Thus, the Portuguese Constitution of 1976 can also be understood as the fundamental text through which a society – in this case the Portuguese –, that rebuilds itself politically after the fall of a dictatorial regime rejects the legal and political principles that guided the activity of that regime,<sup>9</sup> in a triple process of collective learning, reparation of historical injustices<sup>10</sup> and democratic experimentalism.<sup>11</sup>

However, because the constitutional text is more comprehensive and speaks of “*fascist*”, and not just of Estado Novo, because the ordinary law that unfolds its content follows the same path and refers to the “*fascist regimes that History registers*” and because the legislative command present in Article 46(4) was not included in the final and transitional provisions of the Portuguese Constitution, unlike what happens, for example, in the Italian Constitution, which thus limits the scope of temporal and material application of its prohibition of the “*reorganisation, in any form, of the dissolved fascist party*”,<sup>12</sup> we can conclude that, although the Estado Novo regime is the starting point in the interpretation of the norm under analysis, it does not exhaust its content in any way, and that its application points beyond the period of consolidation of Portuguese democracy.

From these first reflections we can extract the first concern that shapes our process of defining the contours of the political category “*fascism*.” Fascism cannot detach itself from the historical and geographical contexts in which it manifests itself, nor can we ignore the influence that historically determined objective and ideological conditions exert on it and on its action.<sup>13</sup> The different fascisms are not exactly the same as each other. Moreover, by definition, they are nationalist, so they always seek to assert their “*originality*”<sup>14</sup> and the originality of the nation whose interests they claim to represent.

<sup>7</sup> Gomes Canotilho and Moreira, *Constituição da República Portuguesa Anotada*, 649.

<sup>8</sup> See also Miranda, “Anotação ao Artigo 46.º”, 695.

<sup>9</sup> Peter Niesen, “Anti-extremism, negative republicanism, civic society: three paradigms for banning political parties”, *German Law Journal*, v. 3, no. 7 (2002), 26, doi:10.1017/S2071832200015157.

<sup>10</sup> Niesen, “Anti-extremism”, 2.

<sup>11</sup> Niesen, “Anti-extremism”, 26.

<sup>12</sup> See Niesen, “Anti-extremism”, 1, 3-4.

<sup>13</sup> Fernando Rosas, *Salazar e os fascismos/Ensaio breve de história comparada* (Lisbon: Edições tinta-da-china, 2022), 36, 70-71.

<sup>14</sup> Luís Reis Torgal, *Estados Novos/Estado Novo/Ensaio de história política e cultural* (Coimbra: Imprensa da Universidade de Coimbra, 2009), 332, <https://ucdigitalis.uc.pt/pombalina/item/52195>.

Even so, despite the flexibility that has to characterise it, we are still faced with a political category, a concept that brings together ideological responses of the same type,<sup>15</sup> similar to each other. The study of reality by the different social sciences cannot dispense with the use of categorisation and synthesis,<sup>16</sup> so here we cannot ignore the “*ideological matrix*”<sup>17</sup> that the different fascisms share. That is our second concern. We reject a taxonomist approach to fascism, an absolutely mechanical categorisation of these phenomena, in which, using a list of characteristics, we verify which political phenomena have all these characteristics and can thus belong to the select group of fascisms,<sup>18</sup> and we reject outright those that do not have them. However, we can point out these characteristics, which are related to each other, and which are verified in each case with different intensities. The important thing is that, in the end, we can lead them and the way they are articulated back to that ideological matrix.

## 2.2. *A brief characterisation of fascism*

Fascism can be understood as a third-way political response, that is, simultaneously anti-liberal and anti-communist,<sup>19</sup> to the multimodal crisis of capitalist demo-liberalism,<sup>20</sup> to the failures of a democracy that announces itself but is not completely fulfilled in the lives of citizens.<sup>21</sup> It presents itself as an alternative to the social unrest promoted by the by organisations on the left of the political spectrum responsible for political and social contestation,<sup>22</sup> the organised labour movement, at a time when it is weakened and already on the defensive.<sup>23</sup>

It is both radical and conservative: it proposes a violent break with liberal democracy, but it also defends a maintenance, and even reproduction, of the economic and social structures it encounters<sup>24</sup> – João Bernardo uses the expression “*revolt within cohesion*”<sup>25</sup> in this regard. Cohesion that is organised around the nation, that functions for fascisms as an inter-class myth of regeneration and rescue of the political community<sup>26</sup> from the decadence and deep crisis to which liberalism would have condemned it – fascism is also profoundly nationalistic.<sup>27</sup>

There is in the movements that follow this political ideology an obsessive concern with the previously mentioned crisis and with the threat posed by those they point to as the cause of this crisis – liberalism,<sup>28</sup> as we have seen, and communism, or socialism, or the political left in general –, a concern that would justify the adoption

<sup>15</sup> Rosas, *Salazar e os fascismos*, 70.

<sup>16</sup> Manuel Loff, “As duas ditaduras ibéricas na nova ordem eurofascista (1936-1945)/Autodefinição, mundivisão e Holocausto no Salazarismo e no Franquismo./Volume I” (PhD diss., European University Institute – Department of History and Civilization, 2004), 44, 46. See also Luís Reis Torgal, *Estados Novos*, 335.

<sup>17</sup> Portuguese Constitutional Commission Judicial Opinion No. 19/78, no. 8.

<sup>18</sup> Rosas, *Salazar e os fascismos*, 36.

<sup>19</sup> Loff, “As duas ditaduras ibéricas”, 337.

<sup>20</sup> Rosas, *Salazar e os fascismos*, 38.

<sup>21</sup> Theodor W. Adorno, *Aspetos do novo radicalismo de direita*, trans. Teresa Toldy and Marian Toldy (Lisbon: Edições 70, 2020), 19.

<sup>22</sup> Rosas, *Salazar e os fascismos*, 89, 93.

<sup>23</sup> Rosas, *Salazar e os fascismos*, 91-92.

<sup>24</sup> João Bernardo, *Labirintos do fascismo. Na encruzilhada da ordem e da revolta* (Porto: Edições Afrontamento, 2003), 66.

<sup>25</sup> Bernardo, *Labirintos do fascismo*, 25.

<sup>26</sup> Bernardo, *Labirintos do fascismo*, 215.

<sup>27</sup> Reis Torgal, *Estados Novos*, 338. See also Rosas, *Salazar e os fascismos*, 162-163.

<sup>28</sup> Rosas, *Salazar e os fascismos*, 161-162.

of compensatory cults<sup>29</sup> of order,<sup>30</sup> hierarchy<sup>31</sup> and unity,<sup>32</sup> since only through them could the greatness of the nation be restored. According to those political movements, the aforementioned compensatory cults should be imposed violently, with a tendentially unrestricted violence,<sup>33</sup> and administered in an authoritarian manner by a strong State,<sup>34</sup> at the head of which we will find its supreme and charismatic leader,<sup>35</sup> who would be responsible for interpreting the national interest<sup>36</sup> and feeding it through the implementation, in social practice, of the traditional values that would compose it<sup>37</sup> since time immemorial.

### 3. New far-right movements and (neo-)fascisms

In short, what we intend with this work is to understand if and in what terms the constitutional norm under analysis can be applicable in the present to the new far-right movements. To do so, we must, of course, see what the relationship of these movements with the fascist ideology is.

First of all, some notes about the fascism that may exert some influence on the new far-right movements.

It is necessary to begin by remembering that, due to the influence it has exerted and continues to exert, fascism has gone beyond the state of a mere political phenomenon attached to a specific historical epoch,<sup>38</sup> having become a political ideology with a transnational dimension and a trans-historical<sup>39</sup> dimension, and that is why we are addressing the possibility of its appearance in the present.

Now, the fascism of the present will not, for different reasons, and in most cases, be classical fascism, although there are still political groups loyal to it.<sup>40</sup> The circumstances of the present are not at all the same as those that marked the period of the rise of classical fascism; the crises that cross contemporaneity do not have the same contours, nor do they raise the same problems, as the crises that preceded them and are understood from social sensibilities completely different from those that inhabited the world a century ago;<sup>41</sup> there is now a great consensus around liberal democracy,<sup>42</sup> whereas in the first half of the twentieth century it was not sufficiently consolidated, it was associated with the instability that was experienced and was, therefore, a target of distrust.<sup>43</sup> In addition, the memories of the atrocities committed by classical fascisms in power continue to weigh on collective experiences<sup>44</sup> and, for

<sup>29</sup> Robert O. Paxton, *A anatomia do fascismo*, trans. Patrícia Zimbres and Paula Zimbres (São Paulo: Editora Paz e Terra, 2007), 358-359.

<sup>30</sup> Bernardo, *Labirintos do fascismo*, 25-26.

<sup>31</sup> Portuguese Constitutional Commission Judicial Opinion No. 11/77, no. 15.

<sup>32</sup> Paxton, *A anatomia do fascismo*, 358.

<sup>33</sup> Rosas, *Salazar e os fascismos*, 207-208. See also Robert O. Paxton, *A anatomia do fascismo*, 359.

<sup>34</sup> Rosas, *Salazar e os fascismos*, 197.

<sup>35</sup> Rosas, *Salazar e os fascismos*, 233. See also Luís Reis Torgal, *Estados Novos*, 337.

<sup>36</sup> Rosas, *Salazar e os fascismos*, 35.

<sup>37</sup> Rosas, *Salazar e os fascismos*, 160-161.

<sup>38</sup> Manuel Loff, “Não são mesmo (neo)fascistas? O lugar da extrema-direita no assalto à democracia”, in *Novas e Velhas Extremas-Direitas*, ed. Cecília Honório and João Mineiro (Lisbon: Edições Parsifal), 49.

<sup>39</sup> Traverso, “Spectres du fascisme”, 108.

<sup>40</sup> Mudde, *O Regresso da ultradireita*, 31.

<sup>41</sup> See Loff, “Não são mesmo (neo)fascistas?”, 38.

<sup>42</sup> Mudde, *O Regresso da ultradireita*, 19.

<sup>43</sup> Rosas, *Salazar e os fascismos*, 43-44.

<sup>44</sup> Rosas, *Salazar e os fascismos*, 294.

this reason and also because liberal democracy has been consolidated, political violence is no longer considered legitimate.<sup>45</sup>

For all these reasons, the new fascisms will not be able to manifest themselves in the same way as their predecessors, they will want to adapt to the sensibilities of the present and will even try to appear more innocent.<sup>46</sup> It will be in fascisms guided by these concerns, the “*possible fascisms in the twenty-first century*”,<sup>47</sup> the neo-fascisms,<sup>48</sup> if one prefers to label them that, that we will be able to find the “*ideological magma*”<sup>49</sup> of the new movements of the far-right.

Because liberal democracy has been consolidated in such a way that it has become a consensual and unquestionable reality, the contemporary far-right does not question it. Classical fascism, on the other hand, was frontally opposed to it.<sup>50</sup> It is here that some authors draw a line of incommunicability between the far-right of the past and that of the present. In this article, we reject that incommunicability. The contemporary far-right does not call democracy into question, it is true, but it does not do so only directly: it is opposed to the elements that allow this democracy to be qualified as liberal and to the elements that make up the rule of law,<sup>51</sup> the latter of which, as we shall see, is inseparable from democracy; it is opposed to the elements that guarantee the operationalisation of democracy and does not defend democracy as configured in the Portuguese Constitution and in other Western demo-liberal Constitutions. Thus, even if that distinction corresponds to reality, the truth is that it does not have relevant practical effects, the new far-right movements are not expressly and frontally anti-democratic, but they are so indirectly.

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Having considered these preliminary questions, let us now dedicate ourselves to characterising the object associated with them, the contemporary far-right, and to understand in what points it is close to classical fascism. The concerns that have shaped our process of defining fascism will also mark what we say here about neo-fascisms and the influence they may exert on the new far-right movements: we must consider, on the one hand, the historical context in which the growth of these movements takes place, and, on the other hand, the type of ideological response they offer.

On the political spectrum, the new far-right movements are included in the “*broader right*”<sup>52</sup> and correspond to the part of it that we can classify as “*anti-system*”<sup>53</sup> and that opposes the existing consensus around the democratic principle and the rule of law.<sup>54</sup> They emerged at the beginning of this century<sup>55</sup> and what

<sup>45</sup> See Loff, “Não são mesmo (neo)fascistas?”, 58.

<sup>46</sup> Umberto Eco, *Cinco escritos morais*, trans. José Colaço Barreiros (Algés: DIFEL 82, 1998), 51-52.

<sup>47</sup> Traverso, “Spectres du fascisme”, 107.

<sup>48</sup> See Roger Griffin, quoted in Nigel Copsey, “Historians and the contemporary far right: to bring (or not to bring) the past into the present?”, in *Researching the Far Right/Theory, Method and Practice*, ed. Stephen D. Ashe *et al.* (New York: Routledge), 38-39.

<sup>49</sup> Loff, “Não são mesmo (neo)fascistas?”, 49.

<sup>50</sup> Mudde, *O Regresso da ultradireita*, 19.

<sup>51</sup> Mudde, *O Regresso da ultradireita*, 19.

<sup>52</sup> Mudde, *O Regresso da ultradireita*, 18.

<sup>53</sup> Mudde, *O Regresso da ultradireita*, 19.

<sup>54</sup> Mudde, *O Regresso da ultradireita*, 19.

<sup>55</sup> Mudde, *O Regresso da ultradireita*, 30.

distinguishes them from their predecessors is their integration into the mainstream and the growing support they have received,<sup>56</sup> especially in the last decade.

They are, like classical fascisms, anti-liberal and anti-left-wing: anti-liberal, because, we repeat, they reject the existing consensus around post-World War II liberal democracy, particularly minority rights,<sup>57</sup> pluralism,<sup>58</sup> and the separation of powers;<sup>59</sup> anti-left-wing, because, under the cover of “*cultural Marxism*”<sup>60</sup> and “*political correctness*”,<sup>61</sup> terms that they use indiscriminately against any political claim that calls into question the hierarchies they defend and intend to reinstate or reinforce – and that we will address in more detail in due course –, they blame the political left and the “*corrupt*” political elites that are associated with it<sup>62</sup> for the national disgrace.<sup>63</sup>

They are also both radical and ultraconservative: radical, because they are anti-system,<sup>64</sup> because they want to destabilise “*liberal-democratic systems*”<sup>65</sup> and because they propose a break with these systems and the establishment of a new political order, an authoritarian one;<sup>66</sup> ultraconservatives, because, like their predecessors, they see in the re-establishment of an order governed by the traditional values of respect, order, discipline and hierarchy, as well as in the values of the traditional family, the means of saving the nation from the aforementioned disgrace.<sup>67</sup>

Today’s far-right organisations, undemocratic in their organisation and functioning and structured around their leaders,<sup>68</sup> remain, like those that preceded them, authoritarian: to solve national problems they require a strong power,<sup>69</sup> the establishment of a “*society with a strict order*”,<sup>70</sup> “*a security organisation of the public space*”<sup>71</sup> at all levels and a “*punitive radicalisation*”<sup>72</sup> of criminal law, with, for example, the harsher punishment of offences<sup>73</sup> and the reintroduction of the death penalty,<sup>74</sup> and attribute to the military and security forces an important responsibility in this mission of national salvation, far beyond the attributions we assign them today.<sup>75</sup>

Their nationalism changed, acquired an ethnic dimension<sup>76</sup> and a dimension of defence of a Judeo-Christian Western cultural identity.<sup>77</sup> They defend the superiority

<sup>56</sup> Mudde, *O Regresso da ultradireita*, 31-32.

<sup>57</sup> Mudde, *O Regresso da ultradireita*, 19.

<sup>58</sup> Jens Rydgren, Introduction to *The Oxford handbook of the radical right* (New York: Oxford University Press, 2018), 2.

<sup>59</sup> Mudde, *O Regresso da ultradireita*, 19.

<sup>60</sup> Mudde, *O Regresso da ultradireita*, 45.

<sup>61</sup> Rydgren, Introduction, 5.

<sup>62</sup> Mudde, *O Regresso da ultradireita*, 45, 47.

<sup>63</sup> Mudde, *O Regresso da ultradireita*, 47.

<sup>64</sup> Mudde, *O Regresso da ultradireita*, 19.

<sup>65</sup> Loff, “*Não são mesmo (neo)fascistas?*”, 50.

<sup>66</sup> Loff, “*Não são mesmo (neo)fascistas?*”, 50-51.

<sup>67</sup> Mudde, *O Regresso da ultradireita*, 45.

<sup>68</sup> Mudde, *O Regresso da ultradireita*, 61.

<sup>69</sup> Traverso, “*Spectres du fascisme*”, 117.

<sup>70</sup> Mudde, *O Regresso da ultradireita*, 39.

<sup>71</sup> Loff, “*Não são mesmo (neo)fascistas?*”, 50.

<sup>72</sup> Loff, “*Não são mesmo (neo)fascistas?*”, 51.

<sup>73</sup> Mudde, *O Regresso da ultradireita*, 39.

<sup>74</sup> Mudde, *O Regresso da ultradireita*, 45. See also Enzo Traverso, “*Spectres du fascisme*”, 117.

<sup>75</sup> Loff, “*Não são mesmo (neo)fascistas?*”, 50.

<sup>76</sup> Tamir Bar-On, “*The radical right and nationalism*”, in *The Oxford handbook of the radical right*, ed. Jens Rydgren (New York: Oxford University Press, 2018), 18.

<sup>77</sup> Rydgren, Introduction, 4.



of the national cultural identity<sup>78</sup> and consider that its domination<sup>79</sup> and the homogeneity of the nation-state are threatened by the cultural identities of non-native groups,<sup>80</sup> which is why they argue that elements of non-native groups should choose between assimilation and expulsion from the national territory.<sup>81</sup>

Finally, given that political violence is no longer considered legitimate,<sup>82</sup> the violence practiced by contemporary far-right organisations is mainly social and symbolic, taking in many cases the form of attacks on the fundamental rights of people belonging to certain social groups who, because they possess certain characteristics, have a history of persecution, discrimination and exclusion.<sup>83</sup> We will call these social groups identity minorities: minorities, in a qualitative sense,<sup>84</sup> and not quantitatively, that is, given the asymmetry of power that penalises these groups that struggle “for the interpretation and satisfaction of historically unfulfilled demands”<sup>85</sup> and for equal rights, and that fight against the state of incapacity to which the *status quo* and the hierarchies that compose it have pushed them and against the inequalities that derive from that incapacity<sup>86</sup> – for these reasons we also consider discrimination on the basis of gender, even if the female gender outnumbers the male gender; identity, because the marginalisation that penalises them and prevents them from politically, socially and economically conforming the societies to which they legitimately belong is due to certain characteristics that make up the webs of their identities.<sup>87</sup>

As we have already had the opportunity to mention, the context marked by the growth of the new far-right movements is very different from the one that saw the rise of classical fascism to power. However, it is possible to find similarities between one and the other. The first of these is the verification, in the present, of a crisis of demoliberalism, which is also multidimensional<sup>88</sup> – economic, financial, social, ideological, even existential,<sup>89</sup> because it calls into question the confidence of citizens in institutions and politics<sup>90</sup> –, began in the 1970s and had its “deepest and most recent shock”<sup>91</sup> in the “great depression of 2008/2009”,<sup>92</sup> and is marked by the deep worsening of economic<sup>93</sup>

<sup>78</sup> Mudde, *O Regresso da ultradireita*, 43.

<sup>79</sup> Rydgren, “Introduction”, 3.

<sup>80</sup> Mudde, *O Regresso da ultradireita*, 38.

<sup>81</sup> Mudde, *O Regresso da ultradireita*, 38.

<sup>82</sup> Loff, “Não são mesmo (neo)fascistas?”, 58.

<sup>83</sup> Rosas, *Salazar e os fascismos*, 296-297.

<sup>84</sup> Gunnar Myrdal, quoted in Lewis M. Killian, “What or who is a “minority”?”, *Michigan Sociological Review*, no. 10 (1996): 22, <https://www.jstor.org/stable/40969001>.

<sup>85</sup> Jürgen Habermas, “Lutas pelo reconhecimento no Estado democrático constitucional”, in *Multiculturalismo/Examinando a política de reconhecimento*, Charles Taylor et al., trans. Marta Machado (Lisbon: Instituto Piaget, 1998), 126.

<sup>86</sup> Killian, “What or who is a “minority”?”, 21.

<sup>87</sup> Killian, “What or who is a “minority”?”, 18, 21-22. See also Habermas, “Lutas pelo reconhecimento”, 135.

<sup>88</sup> Rosas, *Salazar e os Fascismos*, 288.

<sup>89</sup> See Aristotle Kallis, “When fascism became mainstream: the challenge of extremism in times of crisis/second lecture on fascism – Amsterdam – April 9 2015”, *Fascism - Journal of Comparative Fascist Studies*, v. 4, no.1 (2015): 16-17, doi:10.1163/22116257-00401001.

<sup>90</sup> Pedro Luís Teles de Carvalho, “A desigualdade económica e o populismo de extrema direita na UE” (master’s diss., Universidade do Porto, 2021), 53.

<sup>91</sup> Rosas, *Salazar e os fascismos*, 288.

<sup>92</sup> Rosas, *Salazar e os fascismos*, 288.

<sup>93</sup> Carvalho, “A desigualdade económica”, 55.

and social inequalities<sup>94</sup> and the “*loss of representativeness of political systems.*”<sup>95</sup> Secondly, we have the defeat of the forces of contestation on the left of the political spectrum,<sup>96</sup> the decline of the communist parties<sup>97</sup> and the identity crisis of the socialist parties and of the international social democracy, which have lost their reformist intent.<sup>98</sup> And, thirdly, we have the occupation of the space of revolt and social contestation by the contemporary far-right,<sup>99</sup> with a level of popular support that only finds a parallel in the era of the rise of classical fascism.<sup>100</sup>

The gain in attractiveness of fascist-type solutions has been responsible for the radicalisation of the traditional right and the fascisation of the far-right. It is our understanding that when the core elements of the ideological matrix of fascism are brought together, that is, when we are faced with an authoritarian and violent project of national regeneration and homogenisation, the far-right that heads this project can be qualified as fascist, or, if we prefer, neo-fascist.

#### 4. The persecution, by far-right and by fascisms throughout history, of individuals belonging to identity minorities

##### 4.1. Preliminary thoughts

Having explained the political phenomena that we intend to address here, the time has come to formulate the perspective from which we intend to approach them.

The attractiveness of (neo-)fascist political projects, and far-right political projects in general, is justified, in part, because, in times of crisis, they manage to provide citizens with a sense of “*certainty and security, elements that are highly sought after in times of extreme anxiety.*”<sup>101</sup> And they do so by promoting a common national identity<sup>102</sup> and imposing, if necessary by recourse to the force of an authoritarian state, unity around the traditionalist values that they point to as constituents of that national identity since its mythical glorious past.<sup>103</sup>

It turns out that that attractiveness is also explained by the fact that the organisations carrying those political projects also offer an explanation, although simplistic, for the emergence of these crises.<sup>104</sup> Articulating and reinforcing ideas and prejudices that inhabit common sense because they have not been the target of appropriate ideological criticism,<sup>105</sup> they draw the lines of that original national identity also in the negative, they divide society between “*the virtuous people*” who carry this identity and the others, who do not, and they point to the latter as the ultimate responsible for national decadence.<sup>106</sup> If liberal democracy and the political left were

<sup>94</sup> Loff, “Não são mesmo (neo)fascistas?”, 56.

<sup>95</sup> Loff, “Não são mesmo (neo)fascistas?”, 56.

<sup>96</sup> Rosas, *Salazar e os fascismos*, 287.

<sup>97</sup> Rosas, *Salazar e os fascismos*, 290.

<sup>98</sup> Jorge Miranda, “Os novos paradigmas do Estado social” (paper presented at the XXXVII Congresso Nacional de Procuradores de Estado, Belo Horizonte, September 28, 2011), 8. See also Rosas, *Salazar e os Fascismos*, 290.

<sup>99</sup> Rosas, *Salazar e os fascismos*, 292.

<sup>100</sup> Mudde, *O Regresso da ultradireita*, 15, 31-32.

<sup>101</sup> Carvalho, “A desigualdade económica”, 86.

<sup>102</sup> Carvalho, “A desigualdade económica”, 86.

<sup>103</sup> Loff, “Não são mesmo (neo)fascistas?”, 50. See also Rydgren, Introduction, 1, 6.

<sup>104</sup> Carvalho, “A desigualdade económica”, 86.

<sup>105</sup> Bernardo, *Labirintos do Fascismo*, 829, 831.

<sup>106</sup> Carvalho, “A desigualdade económica”, 86.

the abstract entities responsible for the destruction of the nation, these others are the face of the disorder that the far-right claims to fight. Political divergence, social contestation and the ways of life considered by these organisations as deviant are a threat<sup>107</sup> to the unity, order and homogeneity that they intend to implement; the path to national regeneration will therefore be, according to them, the path of national and ethnic purity<sup>108</sup> – the exogenous elements must be assimilated into normative social structures, if they do not want to be the object of correction, punishment or, in extreme cases, extermination.

The information that was not mentioned is that the aforesaid “deviant” ways of life correspond to coordinates that make up the identities of many individuals and bring together various social groups with a history of systematic disrespect, marginalisation and oppression in the name of social normativity, hierarchies and systems of social exclusion that the far-right and (neo-)fascisms intend to reinforce or reimplement – the identity minorities.

The elements of our point of view are gathered. What we intend to demonstrate here is that the contempt and persecution of difference are, in articulation with the elements that we have previously pointed out as equally defining fascism – in particular, the call for homogenisation and the defence of order and hierarchy based on traditional values (ultra conservatism) –, characteristics of this political ideology from its genesis, from classical fascism, to the present day, especially when they stand out among the other characteristics. From this point on, we will seek to reinforce the original and current legitimacy of Article 46(4) of the Portuguese Constitution and point out interpretative paths for the constitutional command.

#### ***4.2. The persecution of individuals belonging to identity minorities***

##### ***4.2.1. In classical fascisms***

Classical fascisms were especially complimentary of inequalities,<sup>109</sup> particularly ethnic and racial inequalities. We refer, of course, to anti-Semitism and racism, which already inhabited the European imagination at the time;<sup>110</sup> classical fascisms articulated them in political projects for their respective nations,<sup>111</sup> and German National Socialism took them to the extreme.<sup>112</sup> For classical fascisms, “*citizenship and the benefits associated with it*”<sup>113</sup> were reserved for those with “*characteristics considered national*”<sup>114</sup> and, therefore, superior. The biological racism that was part of the official doctrine of Nazi Germany was especially inflexible, the fate of those who were considered inferior was already determined:<sup>115</sup> since they could not be assimilated, they had to serve the interests of the superior race – the Aryan race – until they were eliminated when they could not even be instrumentalised to do

<sup>107</sup> See Mudde, *O Regresso da ultradireita*, 44.

<sup>108</sup> Rydgren, Introduction, 6.

<sup>109</sup> Mudde, *O Regresso da ultradireita*, 35.

<sup>110</sup> See Kevin Passmore, *Fascism/A very short introduction* (New York: Oxford University Press, 2002), 117.

<sup>111</sup> Passmore, *Fascism*, 108.

<sup>112</sup> Stanley G. Payne, “Fascism and racism”, in *The Cambridge History of Twentieth-Century Political Thought*, ed. Terence Ball and Richard Bellamy (Cambridge: Cambridge University Press, 2005), 136.

<sup>113</sup> Passmore, *Fascism*, 108.

<sup>114</sup> Passmore, *Fascism*, 108.

<sup>115</sup> Passmore, *Fascism*, 108-109.

so.<sup>116</sup> Among the “*races*” that were under the crosshairs of National Socialism were the Jews, who were particularly persecuted:<sup>117</sup> they were described as “*subhuman*”,<sup>118</sup> “*parasitic*”,<sup>119</sup> as a separate race whose purpose was to destroy the existence of the other races.<sup>120</sup>

Sexual and gender issues were also not ignored by classical fascisms. Sexuality was linked to the reproduction of the race,<sup>121</sup> heterosexuality was the imposed norm, and homosexuality was forbidden and persecuted.<sup>122</sup> According to the classical fascism organisations, the role of women was circumscribed to the life of the home, to reproduction and to the education of children,<sup>123</sup> the future of the nation, which was intended to be racially and ethnically pure.

#### 4.2.2. *In the Estado Novo*

Bearing in mind that, during the period of its implementation, the Estado Novo – the conservative Portuguese fascism –,<sup>124</sup> shared with the other classical fascisms an ideological environment of similar contours, it is natural that it shared with them some lines of action in the matters that we have been dealing with in this section. Nevertheless, we can point out some particularities.

Homosexuality existed, in the Estado Novo, at the intersection between perversion, disease and crime,<sup>125</sup> because it called into question the institution of the family, the great pillar of the regime.<sup>126</sup> Homosexual existences were made invisible and, when they claimed the space that was due to them, they were intimidated, persecuted and often punished.<sup>127</sup> Their families pressured them to live the life that was expected of them, and it was not uncommon for them to end up in heterosexual marriages to conceal their sexual orientation.<sup>128</sup> Medicine, with the support of the regime, pathologised them, made them aberrations,<sup>129</sup> and prescribed, as supposed solutions, work, medication and, at the limit, from a certain point, conversion therapies,<sup>130</sup> which involved, for example, the application of electric shocks to the temples<sup>131</sup> or the “*administration of chemicals that caused nausea when viewing images of people of the same sex that were attractive.*”<sup>132</sup> Criminal Law completed this persecution,

<sup>116</sup> Passmore, *Fascism*, 109.

<sup>117</sup> Payne, “Fascism and racism”, 137.

<sup>118</sup> Payne, “Fascism and racism”, 137.

<sup>119</sup> Passmore, *Fascism*, 111.

<sup>120</sup> Payne, “Fascism and racism”, 128.

<sup>121</sup> Passmore, *Fascism*, 125.

<sup>122</sup> Passmore, *Fascism*, 125.

<sup>123</sup> Passmore, *Fascism*, 126.

<sup>124</sup> Rosas, *Salazar e os fascismos*, 114-115.

<sup>125</sup> Raquel Afonso, “A resistência quotidiana dos homossexuais no Estado Novo”, *Trabalhos de Antropologia e Etnologia/Revista inter e transdisciplinar de Ciências Sociais e Humanas*, v. 59 (2019): 92, [https://run.unl.pt/bitstream/10362/139316/1/A\\_RESISTENCIA\\_QUOTIDIANA\\_DOS\\_HOMOSSEXUAIS\\_NO\\_ESTADO\\_NOVO.pdf](https://run.unl.pt/bitstream/10362/139316/1/A_RESISTENCIA_QUOTIDIANA_DOS_HOMOSSEXUAIS_NO_ESTADO_NOVO.pdf).

<sup>126</sup> Susana Pereira Bastos, *Estado Novo e os seus vadios/Contribuição para o estudo das identidades marginais e da sua repressão* (Lisboa: Publicações Dom Quixote, 1997), 238.

<sup>127</sup> See Pierre Bourdieu, quoted in Raquel Afonso Louro, “Homossexualidade e resistência durante a ditadura portuguesa: estudos de caso” (master’s diss., Universidade Nova de Lisboa, 2018), 10-11.

<sup>128</sup> Louro, “Homossexualidade e resistência”, 70, 75.

<sup>129</sup> See Louro, “Homossexualidade e resistência”, 57.

<sup>130</sup> Louro, “Homossexualidade e resistência”, 60.

<sup>131</sup> See Louro, “Homossexualidade e resistência”, 61.

<sup>132</sup> Gabriela Moita, quoted in Louro, “Homossexualidade e resistência”, 60.

since it extended its action to these cases,<sup>133</sup> with the corresponding internment of these people having as its objective the punishment of the agent's personality, showing them the perversity of their inclinations and correcting them.<sup>134</sup>

The family, organised according to the traditional model,<sup>135</sup> was a great pillar of the regime. Within it, most of the burdens fell on the woman,<sup>136</sup> who should be docile<sup>137</sup> and obedient to her spouse<sup>138</sup> and to whom the care of the home,<sup>139</sup> the children and her own husband<sup>140</sup> was associated; even so, the authority<sup>141</sup> and power of direction of the family<sup>142</sup> were the prerogatives of the latter. The gender roles assigned<sup>143</sup> were very unfavourable to women and their emancipation.

Finally, it is necessary to address the racism and discrimination based on ethnicity practiced by Portuguese fascism. The nationalism of the Estado Novo could not be detached from the colonial situation of the country.<sup>144</sup> Initially, the regime's colonial policy was based on attributing a role<sup>145</sup> of superiority to the Portuguese, who would be responsible for bringing civilisation to the colonised peoples.<sup>146</sup> The latter were described as inferior,<sup>147</sup> as primitive,<sup>148</sup> "savage",<sup>149</sup> often as being close to animality,<sup>150</sup> and they were considered only as a "labour force"<sup>151</sup> or as a "source of entertainment."<sup>152</sup> However, the world political order changed in the post-World War II period with the movements for the emancipation of colonised territories and, with them, the Portuguese colonial strategy changed, but not the paternalism that already characterised it. The doctrine of Luso tropicalism began to serve as the foundation of Portuguese colonialism,<sup>153</sup> invoking the particular disposition of the Portuguese people<sup>154</sup> to carry out a mission of spreading Christian values, allegedly universal,<sup>155</sup> and pointing towards the construction of a society that aggregates the contributions

<sup>133</sup> António Cascais, quoted in Louro, "Homossexualidade e resistência", 47.

<sup>134</sup> See Louro, "Homossexualidade e resistência", 47.

<sup>135</sup> Anne Cova and António Costa Pinto, "O Salazarismo e as mulheres/Uma abordagem comparativa", *Penélope: revista de história e ciências sociais*, no. 17 (1997): 71, <https://dialnet.unirioja.es/servlet/articulo?codigo=2656445>.

<sup>136</sup> Cova and Pinto, "O Salazarismo e as mulheres", 73.

<sup>137</sup> See Francisco Pereira da Silva Pais Rodrigues, quoted in Rita Correia Madeira, "(Des)igualdade de género e feminismo em Portugal, o país que viveu a mais longa ditadura da Europa Ocidental", *Working Papers IS-UP*, no. 94 (2022): 5, <https://repositorio-aberto.up.pt/bitstream/10216/146221/2/595246.pdf>.

<sup>138</sup> Lígia Amâncio, quoted in Madeira, "(Des)igualdade de género", 3.

<sup>139</sup> Irene Flunser Pimentel, quoted in Madeira, "(Des)igualdade de género", 4.

<sup>140</sup> Cova and Pinto, "O Salazarismo e as mulheres", 73.

<sup>141</sup> Cova and Pinto, "O Salazarismo e as mulheres", 73.

<sup>142</sup> Francisco Pereira da Silva Pais Rodrigues, quoted in Madeira, "(Des)igualdade de género", 5.

<sup>143</sup> Francisco Pereira da Silva Pais Rodrigues, quoted in Madeira, "(Des)igualdade de género", 4-5.

<sup>144</sup> See Rosa Cabecinhas, "Racismo e Etnicidade em Portugal/Uma análise psicossociológica da homogeneização das minorias" (PhD diss., Universidade do Minho, 2002), 81.

<sup>145</sup> Cabecinhas, "Racismo e etnicidade em Portugal", 80.

<sup>146</sup> Luís Cunha, quoted in Cabecinhas, "Racismo e etnicidade em Portugal", 86.

<sup>147</sup> Patrícia Ferraz de Matos, *As Côres do Império/Representações raciais no Império colonial português* (Lisbon: Imprensa de Ciências Sociais, 2006), 125.

<sup>148</sup> Luís Cunha, quoted in Cabecinhas, "Racismo e Etnicidade em Portugal", 83.

<sup>149</sup> Cabecinhas, "Racismo e etnicidade em Portugal", 90.

<sup>150</sup> Matos, *As Côres do Império*, 127.

<sup>151</sup> Cabecinhas, "Racismo e etnicidade em Portugal", 95.

<sup>152</sup> Cabecinhas, "Racismo e etnicidade em Portugal", 95.

<sup>153</sup> Cabecinhas, "Racismo e etnicidade em Portugal", 92-93.

<sup>154</sup> Gilberto Freyre, quoted in Cabecinhas, "Racismo e etnicidade em Portugal", 92.

<sup>155</sup> V. Alexandre, quoted in Cabecinhas, "Racismo e etnicidade em Portugal", 92.

of the various peoples that composed it.<sup>156</sup> Following this paradigm shift, the image of colonised peoples, and in particular of African peoples, of Black people, became that of “*the assimilated Black people*”,<sup>157</sup> the only positive way of looking at them implied their approximation to, and assimilation of<sup>158</sup> – submission to –,<sup>159</sup> the coloniser’s culture.

#### 4.2.3. *In new far-right movements and neo-fascisms*

The racism of the new far-right movements and, *a fortiori*, of neo-fascisms has acquired a more cultural flavour<sup>160</sup> and xenophobia is still present in these organisations. There are even authors who argue that the immigrant, the refugee, the Muslim and the Roma now occupy the place occupied by the Jews in the rhetoric of classical fascism,<sup>161</sup> more specifically in that of National Socialism. Relying on the “*conspiracy theory of the great replacement*”,<sup>162</sup> according to which there is a danger that the numbers of non-Western immigration will outnumber the natives and thus the natives, along with their culture, will be replaced,<sup>163</sup> the contemporary far-right flags non-native elements as threats to Western cultural heritage<sup>164</sup> and to “*the purity of the nation-state*”,<sup>165</sup> as responsible for rising crime levels and social insecurity<sup>166</sup> and as usurpers of resources, employment and social protection, which, according to them, should be destined to nationals.<sup>167</sup>

Muslims are the target of more intense hostility.<sup>168</sup> The new far-right movements draw between the Islam and the countries that welcome non-native Muslims an irredeemable incompatibility,<sup>169</sup> which implies that, in many cases, more than their assimilation, they propose their expulsion from the national territory.<sup>170</sup> Muslims are also represented as being special threats to national security, because they are portrayed as terrorists,<sup>171</sup> and, in a manoeuvre to instrumentalise women’s rights, which, as we will see, are often minimised by these organisations, they are seen, along with other groups of non-white men, as “*animalistic and hypersexual predators*.”<sup>172</sup>

<sup>156</sup> Cabecinhas, “Racismo e Etnicidade em Portugal”, 92.

<sup>157</sup> Cabecinhas, “Racismo e Etnicidade em Portugal”, 90.

<sup>158</sup> Cabecinhas, “Racismo e Etnicidade em Portugal”, 90.

<sup>159</sup> Cabecinhas, “Racismo e Etnicidade em Portugal”, 90.

<sup>160</sup> Loff, “Não são mesmo (neo)fascistas?”, 50.

<sup>161</sup> Loff, “Não são mesmo (neo)fascistas?”, 56. See also José Pedro Zúquete, “Novos tempos, novos ventos?/A extrema-direita europeia e o Islão”, *Análise Social - Revista do Instituto de Ciências Sociais da Universidade de Lisboa*, v. XLVI, no. 201 (2011): 660, <http://analisesocial.ics.ul.pt/documentos/1328742447T6qCK9vw4Ll32GP6.pdf>. Worthy of mention is also Aristotle Kallis, “The radical right and islamophobia”, in *The Oxford handbook of the radical right*, ed. Jens Rydgren (New York: Oxford University Press, 2018), 43-44.

<sup>162</sup> Mudde, *O Regresso da Ultradireita*, 42.

<sup>163</sup> Kallis, “The radical right and islamophobia”, 53.

<sup>164</sup> Zúquete, “Novos tempos”, 657. See also Rydgren, introduction, 4.

<sup>165</sup> Zúquete, “Novos tempos”, 660.

<sup>166</sup> Rydgren, Introduction, 4. See also Mudde, *O Regresso da Ultradireita*, 44.

<sup>167</sup> Rydgren, Introduction, 4. See also Elaine Renee Thomas, quoted in Kallis, “The radical right and islamophobia”, 44.

<sup>168</sup> Kallis, “The radical right and islamophobia”, 42.

<sup>169</sup> Kallis, “The radical right and islamophobia”, 47.

<sup>170</sup> Mudde, *O Regresso da Ultradireita*, 39.

<sup>171</sup> Mudde, *O Regresso da Ultradireita*, 46.

<sup>172</sup> Mudde, *O Regresso da Ultradireita*, 158.

With regard precisely to women's rights and the problems associated with gender inequalities, the new far-right movements are anti-feminist,<sup>173</sup> arguing that contemporary feminism has gone too far<sup>174</sup> and, not infrequently, propose the restoration of male domination.<sup>175</sup> According to them, the traditional family is under threat<sup>176</sup> thanks to women's emancipation, because it implies that women neglect what they call their natural duties.<sup>177</sup> They promote the return to traditional gender roles, to the strong man<sup>178</sup> and provider of the family<sup>179</sup> and to the fragile woman,<sup>180</sup> the complement of her husband who must return home<sup>181</sup> and should only enter the labour market when the children's education is complete.<sup>182</sup> Sometimes, especially in online media, there is the spread of more "hostile"<sup>183</sup> and aggressive positions towards women, who are demeaned and presented as sexual objects.<sup>184</sup>

Finally, it is worth mentioning another major axis of the rhetoric of the contemporary far-right and ultraconservative circles, the so-called "gender ideology",<sup>185</sup> which is nothing more than a term used indiscriminately to name any political project that seeks to call into question, in any way, the *status quo* in matters related to gender and sexuality, which encompasses not only the demands for emancipation of feminist movements, but also, and now we will dedicate ourselves mainly to these issues, the claims for equality and non-discrimination and freedom of self-determination of people who we can fit into the LGBTQIA+ community (Lesbians, Gays, Bisexuals, Transgender, Queer, Intersex, Asexual; the "+" symbol represents all other sexual orientations and gender identifications that have not been specified).<sup>186</sup> Because they defend a sexual order based on Christian values and the traditional heterosexual and monogamous family, which they consider natural and universal,<sup>187</sup> the organisations of the new far-right rebel against those demands. Due to the widespread social acceptance of homosexuality and lesbianism, individuals who can fit into these identity coordinates are more accepted in contemporary far-right circles,<sup>188</sup> although in a limited way, that is, only when the exercise of their self-determination takes place within the limits of discretion and does not jeopardise the *status quo*.<sup>189</sup> The target of greater hostility are the other gender identifications and sexual orientations, in particular transgender

<sup>173</sup> Mudde, *O Regresso da ultradireita*, 158.

<sup>174</sup> Mudde, *O Regresso da ultradireita*, 158.

<sup>175</sup> Patrik Hermansson *et al.*, *The international alt-right/Fascism for the 21st Century?* (New York: Routledge, 2020), 184.

<sup>176</sup> Hermansson *et al.*, *The international alt-right*, 185. See also Mudde, *O Regresso da Ultradireita*, 155, 157.

<sup>177</sup> Hermansson *et al.*, *The international alt-right*, 184.

<sup>178</sup> Mudde, *O Regresso da ultradireita*, 154.

<sup>179</sup> Greg Johnson, quoted in Hermansson *et al.*, *The international alt-right*, 184.

<sup>180</sup> Mudde, *O Regresso da ultradireita*, 154.

<sup>181</sup> Greg Johnson, quoted in Hermansson *et al.*, *The international alt-right*, 184. See also Iris Marion Young, quoted in Hermansson *et al.*, *The international alt-right*, 185.

<sup>182</sup> Mudde, *O Regresso da ultradireita*, 156.

<sup>183</sup> Mudde, *O Regresso da ultradireita*, 157.

<sup>184</sup> Mudde, *O Regresso da ultradireita*, 157.

<sup>185</sup> Gabriella Morena da Silva Seixas, «Ideologia de Gênero» em Portugal: narrativas emergentes e construção de significados» (master's diss., Universidade Nova de Lisboa, 2022), 16-17.

<sup>186</sup> Seixas, «Ideologia de Gênero» em Portugal», 16-17.

<sup>187</sup> Seixas, «Ideologia de Gênero» em Portugal», 117.

<sup>188</sup> Mudde, *O Regresso da ultradireita*, 159.

<sup>189</sup> See Hermansson *et al.*, *The international alt-right*, 196.

identities, which are pathologised, ridiculed and denounced as corrupting and dangerous for young people.<sup>190</sup>

## 5. Our hermeneutic proposal: the incompatibility between (neo-)fascisms and the structuring principles of the Portuguese legal-constitutional system

### *5.1. The conflict between (neo-)fascisms on the one hand and the legal protection of identity and the principles of the rule of law, democracy and human dignity on the other*

In addition to contributing to the creation of a climate of fear<sup>191</sup> and intimidation<sup>192</sup> and of a silencing effect on the aspirations and claims of those targeted, as well as to the increase in the danger of real violence against them,<sup>193</sup> the situations that we can fit into the descriptions we have been making of persecution of people or groups of people due to the possession of certain identity coordinates are also responsible for the “*fabrication of negative alterities*”,<sup>194</sup> of negative identities,<sup>195</sup> which are defined, not by what they are and represent, but by what they lack, by what they are not and “*should be*.”

It is the interests underlying fundamental rights that protect the identity of these persons that are at stake. In the case of the Portuguese Constitution, we are talking about the rights to personal identity and to the development of personality, both enshrined in Article 26(1), one protecting a more static dimension of identity,<sup>196</sup> that which characterises each individual as a singular and irreducible entity that distinguishes itself from the others,<sup>197</sup> its essence,<sup>198</sup> its uniqueness, and the other one, protecting a more dynamic dimension of it,<sup>199</sup> that of the self-determination of each one in its construction,<sup>200</sup> which must be free and protected against any external impositions.<sup>201</sup> Nevertheless, the two dimensions under analysis cannot be understood as disconnected from each other.<sup>202</sup> In the legal order of the EU, this extended protection of identity may find support in Article 7 of the Charter of Fundamental Rights of the European Union (CFREU).

<sup>190</sup> Hermansson *et al.*, *The international alt-right*, 197.

<sup>191</sup> Alessandra Pearce de Carvalho Monteiro, “Democracia militante na atualidade: o banimento dos novos partidos políticos antidemocráticos na Europa” (master’s diss., Universidade de Coimbra, 2015), 62-63.

<sup>192</sup> Gur Bligh, “Defending democracy: a new understanding of the party-banning phenomenon”, *Vanderbilt Journal of Transnational Law*, v. 46, no. 5 (2013): 1368, <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1273&context=vjtl>.

<sup>193</sup> Monteiro, “Democracia militante”, 57.

<sup>194</sup> Traverso, “Spectres du fascisme”, 111.

<sup>195</sup> See Enzo Traverso, *Las nuevas caras de la derecha/Conversaciones com Régis Meyran*, trans. Horacio Pons (Buenos Aires: Siglo Veintiuno Editores Argentina, 2018), 80, 82.

<sup>196</sup> Paul Ricœur, *O Si-Mesmo como Outro*, trans. Ivone C. Benedetti (São Paulo: Editora WMF Martins Fontes, 2014), XIII.

<sup>197</sup> J.J. Gomes Canotilho and Vital Moreira, *Constituição da República Portuguesa Anotada/Volume I* (Coimbra Editora, 2007), 462. See also Rui Medeiros and António Cortês, “Anotação ao Art. 26.º”, in *Constituição Portuguesa Anotada/Tomo I*, ed. Jorge Miranda and Rui Medeiros (Coimbra Editora, 2005), 444.

<sup>198</sup> Charles Taylor, *A Ética da autenticidade*, trans. Luís Lóia (Lisboa: Edições 70, 2009), 42.

<sup>199</sup> Ricœur, *O Si-Mesmo como Outro*, XIII.

<sup>200</sup> Gomes Canotilho and Moreira, *Constituição*, 463, 465.

<sup>201</sup> Gomes Canotilho and Moreira, *Constituição*, 464.

<sup>202</sup> See Ricœur, *O Si-Mesmo como Outro*, 121-122.



Identity, as a “background”<sup>203</sup> that gives meaning to our tastes, desires, values and opinions,<sup>204</sup> is associated with an ethical ideal, that of authenticity,<sup>205</sup> with a principle of originality,<sup>206</sup> if you prefer, and with a demand for truth towards ourselves, from which stems the need to contact and live in accordance with what is our measure,<sup>207</sup> thus also actualising it.<sup>208</sup> This fundamental value, identity, or, in the end, the difference and uniqueness that mark each existence, is protected, not because the value of difference is in itself, that is, not because we value what is different for the simple fact of being different, but because the difference in question has as its reference an individual who has the same dignity as others.<sup>209</sup>

In a State governed by the rule of law, the human dignity is achieved through the fundamental rights of citizens<sup>210</sup> – in this case, the ones we referred to two paragraphs ago, which are of particular importance given their special relationship with the founding principle of the legal-political community that the Portuguese Constitution establishes. In turn, the enshrinement and effective protection of the fundamental rights of citizens correspond to the material dimension of the principle of the rule of law.<sup>211</sup> Beyond the formal dimension of the rule of law, which prescribes, in summary, the subjection of the actions of public authorities to legal norms,<sup>212</sup> fundamental rights benefit from an “*axiological primacy*” in the legal systems built on that principle,<sup>213</sup> so we can say that they correspond to its core.<sup>214</sup>

The principle of the rule of law, which is also a general principle of EU law, as it results from the preamble and Article 2 of the Treaty on European Union (TEU), as well as from the preamble to the CFREU, is closely linked to the democratic principle. In fact, the Portuguese Constitution merges the two into one (see its Article 2), in order to dispel conceptions that allow the rule of law to stand in the way of democratic development or that the public power ignores its commitment to legal norms and fundamental rights<sup>215</sup> – the latter situation would occur if, for example, the majority in power were to attack the fundamental rights of those who we can include in the aforementioned identity minorities. Whether in the realisation of popular sovereignty “*according to legally regulated*

<sup>203</sup> Taylor, *A Ética da Autenticidade*, 48.

<sup>204</sup> Taylor, *A Ética da Autenticidade*, 48.

<sup>205</sup> Taylor, *A Ética da Autenticidade*, 31.

<sup>206</sup> Taylor, *A Ética da Autenticidade*, 43.

<sup>207</sup> Taylor, *A Ética da Autenticidade*, 42.

<sup>208</sup> Taylor, *A Ética da Autenticidade*, 43.

<sup>209</sup> Taylor, *A Ética da Autenticidade*, 62.

<sup>210</sup> Jorge Reis Novais, *A dignidade da pessoa humana/Volume II/Dignidade e inconstitucionalidade* (Coimbra: Edições Almedina, 2016), 101.

<sup>211</sup> Jorge Bacelar Gouveia, “O Estado Constitucional contemporâneo e o princípio do Estado de Direito”, *Themis - Revista da Faculdade de Direito da UNL*, no. 20/21 (2011): 16, [https://run.unl.pt/bitstream/10362/15398/1/JBG\\_Themis\\_2011.pdf](https://run.unl.pt/bitstream/10362/15398/1/JBG_Themis_2011.pdf).

<sup>212</sup> See Alessandra Silveira, “Horizontal integration and Union based on the rule of law”, in *O Estado de Direito na União Europeia/The rule of law in the European Union*, ed. Anabela Miranda Rodrigues, Jónatas Machado and Paulo Pinto de Albuquerque (Coimbra: Instituto Jurídico - Faculdade de Direito da Universidade de Coimbra, 2022), 1.

<sup>213</sup> José Luiz Borges Horta, “Horizontes jusfilosóficos do Estado de Direito/Uma investigação tridimensional do Estado liberal, do Estado social e do Estado democrático, na perspectiva dos Direitos Fundamentais” (PhD diss., Universidade Federal de Minas Gerais, 2002), 20.

<sup>214</sup> Jorge Reis Novais, *Contributo para uma Teoria do Estado de Direito* (Coimbra: Edições Almedina, 2006), 25.

<sup>215</sup> Gomes Canotilho and Moreira, *Constituição da República Portuguesa Anotada*, 204.

*procedures*”<sup>216</sup> or in the conformation of the legal systems, in particular the systems of fundamental rights,<sup>217</sup> by the majorities that democratically come to power, or because it is the effective realisation of fundamental rights that allows the free and equal participation of all citizens in the formation of political power,<sup>218</sup> or, finally, because fundamental rights can only be realised in democratic contexts, since only these provide citizens with the conditions of freedom and equality necessary for this realisation,<sup>219</sup> law and democratic power are always linked.<sup>220</sup> That is why we have previously argued that the new far-right movements are incompatible with the democratic principle, even if this is only perceptible indirectly.

Because of its content, which we will analyse below, the principle of human dignity, the “*principle of principles*”<sup>221</sup> the foundation of the Portuguese Republic, in accordance with Article 1 of the Constitution, as well as of the system of fundamental rights protected by the EU, and even of the EU itself, as seems to result from Article 2 TEU and Article 1 CFREU,<sup>222</sup> has a “*closer material connection*”<sup>223</sup> with the so-called fundamental personality rights,<sup>224</sup> among which we highlight, for what interests us here, the right to personal identity and the right to the development of personality,<sup>225</sup> although it is the core of all fundamental rights, both those provided for in the Portuguese Constitution<sup>226</sup> and those included in the Articles of the CFREU.<sup>227</sup>

The content of the principle of human dignity can, according to the classification of Jorge Reis Novais, who adheres to Jeremy Waldron’s theses, be distributed into two nuclei of ideas;<sup>228</sup> on the one hand, dignity as a legal and moral status of humanity that recognises each person as an entity that, aware of their past and their identity, has the ability to freely program their future, to self-determine and to work to build a world that is one’s own and that is shared with others,<sup>229</sup> and that defines the meaning of its own dignity;<sup>230</sup> on the other hand, dignity as recognition and respect for the “*equal dignity of persons for the simple fact that they are human*”,<sup>231</sup> as a right that each person has, not only to equal treatment, but also to be treated “*as an equal*”,<sup>232</sup> to benefit from equal consideration of

<sup>216</sup> J.J. Gomes Canotilho, *Direito Constitucional e Teoria da Constituição* (Coimbra: Edições Almedina), 100

<sup>217</sup> Habermas, “Lutas pelo reconhecimento”, 131.

<sup>218</sup> Gomes Canotilho, *Direito Constitucional*, 290-291.

<sup>219</sup> Reis Novais, *Contributo*, 207-208.

<sup>220</sup> Gomes Canotilho, *Direito Constitucional*, 98.

<sup>221</sup> Jorge Reis Novais, *A dignidade da pessoa humana/Volume I/Dignidade e direitos fundamentais* (Coimbra: Edições Almedina, 2015), 20.

<sup>222</sup> See José Luís da Cruz Vilaça, “Comentário ao Artigo 1.º”, in *Carta dos Direitos Fundamentais da União Europeia Comentada*, ed. Alessandra Silveira and Mariana Canotilho (Coimbra: Edições Almedina, 2013), 33-34.

<sup>223</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 123.

<sup>224</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 123.

<sup>225</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 124-125.

<sup>226</sup> Reis Novais, *A dignidade da pessoa humana/Volume I*, 13.

<sup>227</sup> Vilaça, “Comentário ao Artigo 1.º”, 33.

<sup>228</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 95.

<sup>229</sup> Hannah Arendt, *As origens do totalitarismo*, trans. Roberto Raposo (Alfragide: Publicações Dom Quixote, 2010), 607.

<sup>230</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 126.

<sup>231</sup> Reis Novais, *A dignidade da pessoa humana/Volume I*, 54.

<sup>232</sup> Dworkin, quoted in Reis Novais, *A dignidade da pessoa humana/Volume II*, 133.

their interests,<sup>233</sup> from which a prohibition of discrimination, stigmatisation and humiliation arises.<sup>234</sup>

With regard to the first dimension of the principle, we will have a violation of the human dignity when someone's self-determination is subjugated, limited, and this limitation does not arise exclusively from the need to protect the fundamental rights of other people or other legally and constitutionally protected assets,<sup>235</sup> or even in cases of identity alienation, in which the person is deprived of the “*control they should have over themselves*”<sup>236</sup>, in which they are prevented from knowing their history<sup>237</sup> or from “*having control over their identity*”<sup>238</sup> and from publicly presenting themselves with it.<sup>239</sup> Reis Novais gives the example that preventing someone from directing their life according to their sexual orientation constitutes a violation of the principle under analysis.<sup>240</sup> On the other hand, when we are faced with a situation of unjust discrimination in which the equal respect of which each one is worthy is not recognised,<sup>241</sup> or when faced with “*unequal treatment that is especially denigrating*”<sup>242</sup> to those who are affected, or in the face of stigmatising, humiliating and degrading treatment, in which someone is treated as inferior<sup>243</sup> or as having an existence that is wrong in itself simply because of being what they are,<sup>244</sup> we will then have the violation of the principle of human dignity in its second dimension.

The previously mentioned second dimension of the principle of human dignity opens the door to another perspective of approach that we also want to take into account. In it – in that second dimension – we certainly find reflections of the principle of equality and of the prohibition of discrimination,<sup>245</sup> provided for in Article 13 of the Portuguese Constitution and, in the context of the EU, in the preamble and Article 2 TEU, as well as in the preamble and Articles 20, 21 and 23 CFREU, with the paragraph 2 of the said Article 13, the paragraph 1 of the aforementioned Article 21 and the earlier mentioned Article 23 serving as useful repositories of criteria according to which those discriminations may occur, many of which we have already had the opportunity to deal with in this article. But there is more to it than that: that dignity is the dignity “*of an individual who is communally integrated*”,<sup>246</sup> deserving of respect from his fellow citizens.<sup>247</sup> Here dignity becomes more than a concept of substance, a relational concept, based on reciprocal social recognition, which, in turn, founds a political and legal community.<sup>248</sup>

<sup>233</sup> Peter Singer, quoted in Reis Novais, *A dignidade da pessoa humana/Volume II*, 133.

<sup>234</sup> Reis Novais, *A dignidade da pessoa humana/Volume I*, 61.

<sup>235</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 139.

<sup>236</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 124.

<sup>237</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 140.

<sup>238</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 124, 140.

<sup>239</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 124.

<sup>240</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 111.

<sup>241</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 133-134.

<sup>242</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 134.

<sup>243</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 134.

<sup>244</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 135.

<sup>245</sup> Reis Novais, *A dignidade da pessoa humana/Volume II*, 133.

<sup>246</sup> Reis Novais, *A dignidade da pessoa humana/Volume I*, 77.

<sup>247</sup> Reis Novais, *A dignidade da pessoa humana/Volume I*, 77.

<sup>248</sup> Hasso Hofmann, quoted in José de Melo Alexandrino, “Perfil constitucional da dignidade da pessoa humana: um esboço traçado a partir da variedade de concepções”, *Revista Brasileira de Direitos Fundamentais & Justiça*, v. 4, no. 11 (2010): 25, <http://dfj.emnuvens.com.br/dfj/article/view/445/321>.

### 5.2. *Personal identity and its dialogical construction*

Like dignity, with which, if we look closely, it shares part of its content, identity can also be understood as a relational concept, of dialogical formation. To better understand it, we will call the contributions of three authors: Charles Taylor, Emmanuel Levinas and Paul Ricoeur.

Seeking to prevent identity from becoming a closure of the being on itself,<sup>249</sup> Charles Taylor draws our attention to the fact that it corresponds to what is significant for each one of us, it relates to what is meaningful,<sup>250</sup> which depends on a horizon of meaning independent of us and our desires.<sup>251</sup> The author adds that we build who we are through a wide variety of “*human languages*”<sup>252</sup> that we only acquire through contact with others,<sup>253</sup> and that the elements that make up our identity are provided to us and are updated by contact with the communities to which we belong.<sup>254</sup> Identity is therefore formed dialogically, and not solitarily, in a monologue.<sup>255</sup>

That dialogical quality is especially notorious in relation to the different identity minorities, which are grouped around the identity coordinates that are particular to them, thus achieving that their members have their particular capacities and talents recognised, because there is a sharing of values, ways of life and aspirations.<sup>256</sup> It is also collectively that the struggles for the emancipation of these minorities, which also involve the simple public affirmation of the traits that make up their identities,<sup>257</sup> are more likely to be successful.<sup>258</sup>

The individual-group link in terms of identities is, however, a two-way relationship. Through the dialogues they establish among themselves, individuals are not limited to updating their identities; they also update the elements that make up the communities in which they are inserted.<sup>259</sup> These communities are not immutable entities to which individuals adhere uncritically, nor can they be if they want to survive, because such survival is only possible if they continue to mirror the meaningful convictions of those who are included in them.<sup>260</sup>

For all that we have said, even if individual identities are not to be confused, from the point of view of concepts, with shared identities, either because identity and the legal protection of identity are mainly linked to the individual, or because shared identities do not even correspond to a sum of the identities of the individuals who share them, or because individual identity is not composed only of the coordinates that serve as an aggregating element to a single community, including many other elements,<sup>261</sup> the truth is that, with regard to their formation

<sup>249</sup> Taylor, *A Ética da Autenticidade*, 20, 30-31, 89-90.

<sup>250</sup> Taylor, *A Ética da Autenticidade*, 49.

<sup>251</sup> Taylor, *A Ética da Autenticidade*, 50, 52-54.

<sup>252</sup> Taylor, *A Ética da Autenticidade*, 46.

<sup>253</sup> Taylor, *A Ética da Autenticidade*, 46.

<sup>254</sup> Luís Lóia, “A exigência do reconhecimento”, in *A Ética da Autenticidade*, Charles Taylor (Lisbon: Edições 70, 2009), 190, 192

<sup>255</sup> Taylor, *A Ética da Autenticidade*, 46-47.

<sup>256</sup> Lóia, “A exigência do reconhecimento”, 202.

<sup>257</sup> Lóia, “A exigência do reconhecimento”, 202.

<sup>258</sup> Habermas, “Lutas pelo reconhecimento”, 126, 142.

<sup>259</sup> Lóia, “A exigência do reconhecimento”, 194. See also Habermas, “Lutas pelo reconhecimento”, 148-149.

<sup>260</sup> Lóia, “A exigência do reconhecimento”, 189.

<sup>261</sup> Lóia, “A exigência do reconhecimento”, 202.

process, one and the other are inseparable, so that, from this perspective, they deserve a joint treatment on our part.

The concern with the closure of the being on itself is not only present in Charles Taylor's ethics of authenticity. It also influences Ricœur's proposals and corresponds to the core of Levinas' philosophy. The first author elevates openness to dialogue with the Other to an ontological category;<sup>262</sup> according to him, the human being only exists in relation,<sup>263</sup> the Self needs the Other, because the latter gives it what it cannot obtain on its own, helps it to realise itself.<sup>264</sup> Emmanuel Levinas goes further, arguing that the order of meaning is produced in the relationship with the Other, through dialogue,<sup>265</sup> in openness to that which escapes the domain of the Self.<sup>266</sup> In Levinas, the meaning of being human lies in openness to the Other,<sup>267</sup> in non-indifference and responsibility for the Other,<sup>268</sup> who, in its vulnerability, challenges us.<sup>269</sup> Respect for the otherness of the Other is, in the work of this author, the essence of justice.<sup>270</sup>

And if we talk about identity and, therefore, difference, and particularly the difference that marks the existences of individuals that we can frame in identity minorities, then it is inevitable that we end up talking about the importance of recognition. Recognition is, if we will, respect for the dignity of the Other "*in what is most essential*";<sup>271</sup> respect for the Other in exactly what it is.<sup>272</sup> The full enjoyment of the freedom of self-determination that we have associated with identity and dignity requires that others first recognise that this freedom exists<sup>273</sup> – recognition is the guarantor of dignity;<sup>274</sup> the "*projection of an inferior or derogatory image on the other*"<sup>275</sup> can really harm its development and oppress it "*to the extent that it is internalised.*"<sup>276</sup> Charles Taylor explains to us that the affirmation of identities takes place within a horizon of diversity and that recognition is precisely the mediator of the conflicts that may arise<sup>277</sup> between these two poles, identity and diversity, preserving the essence of both and allowing them to be actualised in a "*later synthesis.*"<sup>278</sup>

<sup>262</sup> M. Buber, quoted in Renata Vanessa Moura Alves do Rosário Sequeira, "Desejo e reconhecimento no pensamento de Paul Ricoeur" (PhD thesis, Universidade Nova de Lisboa, 2016), 106.

<sup>263</sup> Sequeira, "Desejo e reconhecimento", 193.

<sup>264</sup> Ricœur, *O Si-Mesmo como Outro*, 198.

<sup>265</sup> R. Fornet and A. Gómez, "Filosofia, justiça e amor", in *Entre nós/Ensaio sobre a alteridade*, ed. Pergentino Stefano Pivatto, trans. Pergentino Stefano Pivatto et al. (Petrópolis: Editora Vozes, 2005), 143. See also Emmanuel Levinas, "O Eu e a totalidade", in *Entre nós/Ensaio sobre a alteridade*, coord. Pergentino Stefano Pivatto, trans. Pergentino Stefano Pivatto et al. (Petrópolis: Editora Vozes, 2005), 50.

<sup>266</sup> See Emmanuel Levinas, *Totalidade e infinito*, trans. José Pinto Ribeiro (Lisbon: Edições 70, 2022), 53, 80, 84.

<sup>267</sup> See Levinas, *Totalidade e Infinito*, 12.

<sup>268</sup> Emmanuel Levinas, "O sofrimento inútil", in *Entre nós/Ensaio sobre a alteridade*, ed. Pergentino Stefano Pivatto, trans. Pergentino Stefano Pivatto et al. (Petrópolis: Editora Vozes, 2005), 141.

<sup>269</sup> See Levinas, *Totalidade e Infinito*, 195.

<sup>270</sup> See Levinas, *Totalidade e Infinito*, 71, 91, 295.

<sup>271</sup> Lóia, "A exigência do reconhecimento", 209.

<sup>272</sup> Aristotle, quoted in Ricœur, *O Si-Mesmo como Outro*, 201.

<sup>273</sup> Paulo Barcelos, "Em voo de grou: para uma extensão global do princípio do reconhecimento", in *Emmanuel Levinas - Entre Reconhecimento e Hospitalidade*, ed. Maria Lucília et al. (Lisbon: Edições 70, 2011), 70.

<sup>274</sup> Axel Honneth and Nancy Fraser, quoted in Barcelos, "Em voo de grou", 71.

<sup>275</sup> Taylor, *A Ética da Autenticidade*, 61.

<sup>276</sup> Taylor, *A Ética da Autenticidade*, 61.

<sup>277</sup> Lóia, "A exigência do reconhecimento", 189.

<sup>278</sup> Lóia, "A exigência do reconhecimento", 209.

## **Final remarks**

From the present article we can draw the first conclusion that, in very specific cases, the proximity between the new far-right movements and the classic fascisms is sufficient for the former to be considered neo-fascisms i.e., fascisms adapted to the social and political particularities of the twenty-first century, and to be framed, in the Portuguese case, in the constitutional prohibition of organisations that follow the fascist ideology.

The persecution of people who, due to certain identity coordinates, can qualify as belonging to what we have called identity minorities was the perspective from which we wanted to analyse that ideological-programmatic continuum.

In brief: taking as a starting point the persecution of people on the basis of certain characteristics that make up their identities, we therefore have a violation of the broad legal protection of identity; in turn, the violation of the legal protection of identity constitutes a disrespect for the principle of the rule of law in its material dimension and, through it, for the democratic principle; on the other hand, the fundamental rights linked to identity play a central role in the content of the principle of human dignity, which is thus also violated; finally, we have a particular disrespect for the self-determination of individuals belonging to identity minorities, as well as for the demand for recognition of the Other in their particularities, both of which derive from the latter principle.