

NÚMERO ESPECIAL

Editorial:
**The Portuguese Constitutional Court's
Jurisprudence of Crisis**

**O Tribunal Constitucional Português
e a Jurisprudência da Crise**

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VOL. 4 Nº 1 MAIO 2017

WWW.E-PUBLICA.PT

**EDITORIAL:
THE PORTUGUESE CONSTITUTIONAL COURT'S JURISPRUDENCE
OF CRISIS
OTRIBUNAL CONSTITUCIONAL PORTUGUÊSE A JURISPRUDÊNCIA
DA CRISE**

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In May 2011, Portugal requested financial assistance from the European Commission, the European Central Bank, and the International Monetary Fund, in order to overcome the structural challenges faced by the Portuguese economy, the threat of contagion from the sovereign debt crisis and the adverse conditions faced by the Portuguese banking sector.

The agreement on the Economic and Financial Assistance Programme was formally adopted on 17 May 2011. The Memorandum of Understanding on Specific Economic Policy Conditionality and the Loan Agreement were signed

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thereafter. They included a joint financing package of 78 billion euros, covering the period from 2011 to 2014.

Since then the budget deficit has been reduced from 9.8% of GDP in 2011 to 4,9% in 2014 even if the public debt, which stood at 94% of GDP in 2011, as reached 129% in 2014.

As the programme reached its conclusion, international bond markets at lengthening maturities and favourable yields slowly, but steadily, made their reappearance. In fact, on the basis of the policies adopted, and in the light of Portugal's performance under the programme, the Government has requested its earlier completion. At the same time, the programme has led to dramatic changes to a wide range of welfare entitlements such as rights to health, education, and social assistance, as well as extensive cuts in public servant's payments and pensions.

Towards the end of the execution of the Economic and Financial Assistance Programme, a new item on "legal safeguards" was added to the Memorandum of Economic and Financial Policies' revision of 12 June 2013.

This new item's text was as follows:

'9. Legal safeguards. We will take a number of steps aimed at mitigating legal risks from future potential Constitutional Court rulings. First, expenditure reforms will be designed with the principle of public/private sector and intergenerational equity in mind as well as the need to address the sustainability of social security systems. Second, legislation underpinning the expenditure reforms will be duly justified on compliance with the fiscal sustainability rules in the recently ratified European Fiscal Compact which now ranks higher than ordinary legislation. Third, the government will rely as much as possible on general laws – rather than on one-year budget laws – consistent with the structural nature of the reforms. This also opens the possibility of prior constitutional review of said laws, thus allowing early reaction on the part of the government in case these reforms raise constitutional issues.'

This was a reaction to the rulings of the Portuguese Constitutional Court concerning the 2012 and 2013 budgets, as well as the Court's decision from August 2013 on the imposition of dismissals and redeployments on the public sector. In those decisions the Court had struck down the measures included in the State Budget Laws for 2012 and 2013, which enabled the government to temporarily implement pensions and wage cuts in the public sector. Similar measures adopted in the Budget Law for 2014 were also stroke down by the Court, as well as more structural reforms attempted by the Government regarding the pensions' system and the efficiency and flexibility of the public sector.

It is these landmark decisions on the austerity measures in Portugal, as well a recent decision by the Italian Constitutional Court of March 10, 2015, that we want to discuss in this conference and the best way to do it is, in our opinion, to

enlarge the critical perspectives on those decisions by means of a transnational reflection promoted by legal scholars across different countries and jurisdictions in an increasingly global legal world.

Are the Portuguese Constitutional Court's decisions on the austerity measures the appropriate judicial response to economic and financial crisis?

The following essays were firstly presented on the conference the Portuguese Constitutional Court's Jurisprudence of Crisis, which took place at the University of Lisbon School of Law on the 14th March, 2016. The essays herein included are enlarged versions of the presentations and were submitted to a double blind peer review process, in accordance with the rules of this journal.

The contributions to this special issue address the Portuguese Constitutional Court's Jurisprudence of Crisis' theme from a external perspective, in which participated authors from other european countries whose constitutional courts were also faced with similar issues. In turn, each article was commented by a Portuguese academic.

As guest editors of this special issue, we would like to thank the Editors of *e-Pública* for giving us the opportunity to publish these articles in a way that resembles the context in which they originated and allows emphasizing their unity. Our special thanks, of course, go to all the participants of the Conference on The Portuguese Constitutional Court's Jurisprudence of Crisis who accepted our challenge to transform their papers in the articles appearing herein.
