

EDITORIAL

We are pleased to introduce **Issue 37 of the *Revista Jurídica Portucalese***, covering January–June 2025. This number gathers twenty-four double peer-reviewed research articles and two jurisprudential commentaries, attesting to the vigour of legal scholarship in a period characterised by both continuity and change. For ease of reference, the contributions are discussed below in thematic clusters, even though they appear in the journal in the sequence in which each paper satisfied all editorial and technical requirements for publication.

The opening group concerns ***International and European Law***. Ana Filipa Neves and Carlos Nolasco assess how effectively Directive 2003/109/EC safeguards migrants with long-term-resident status, while Viktoriia Anatiichuk and her co-authors explore the harmonisation of contract law across Member States. Eugénio Lucas provides an in-depth analysis of the emerging institutional architecture of the Unified Patent Court. Catherine Maia and Aklesso Jacques Akpe revisit Rwanda's international responsibility before the Arusha Court, and Viktoria Lomaka *et al.* reflect on the way European integration shapes legal awareness in Ukrainian society.

Ana Filipa Neves & Carlos Nolasco look at how the EU Long-Term Residents (LTR) Directive 2003/109/EC has been transposed into, and actually functions within, the Portuguese legal system. Using documentary analysis plus interviews and focus-groups with long-term migrants in 2021, the authors assess whether the three pillars of the Directive—equal treatment, enhanced protection against expulsion, and intra-EU mobility—are working on the ground.

Viktoriia Anatiichuk, Iryna Banasevych, Ruslana Heints & Uliana Gryshko trace the 30-year drive to harmonise EU contract law and gauges what that means for national legal orders. Drawing on EU legislative dossiers, academic literature and comparative legal analysis, the authors unpack both the benefits (lower transaction costs, greater legal certainty, stronger consumer protection) and the persistent road-blocks (cultural-legal diversity, political inertia, costly consensus-building) on the path to a common European contract regime.

Eugénio Lucas traces the decades-long effort that culminated in the Unified Patent Court and gauges what its launch means for patent protection across Europe. Drawing on EU treaty history, UPC case law and comparative analysis with the U.S. Federal Circuit, he unpacks both the benefits (centralised jurisdiction, faster decisions, lower forum-shopping incentives) and the lingering road-blocks (language-regime costs, opt-out uncertainty, constitutional challenges) on the path to a truly unitary European patent system.

Catherine Maia & Aklesso Jacques Akpe trace the path that led to the first-ever inter-State case before the African Court on Human and Peoples' Rights—DRC v. Rwanda—and gauge what a merits ruling could mean for state-responsibility litigation across Africa. Drawing on UN expert reports, Great-Lakes conflict dossiers and comparative jurisprudence from the ICJ, Inter-American system and African Commission, they unpack both the possible gains (clearer attribution thresholds, victim-centred reparations, a stronger regional bench) and the persistent hurdles (compliance gaps, political push-back, evidentiary complexity) on the road to an effective continental human-rights enforcement regime.

Viktoria Lomaka, Yevhen Novikov, Ivan Yakoviyk, Olesia Tragniuk & Maksym Sych trace how the EU (and NATO) accession process is reshaping Ukrainians' legal consciousness and gauge what this means for the country's understanding of sovereignty, citizenship and rights in the middle of Russia's war. Drawing on EU-Ukraine legal approximation dossiers, a 2023-24 nationwide survey plus focus-group interviews, the authors unpack both the upsides—rising human-rights literacy, stronger civic responsibility, growing demand for rule-of-law reforms—and the enduring hurdles—regional value-gaps, wartime security fears, lingering distrust of state institutions—on the path to a European-oriented legal culture.

Turning to **Public Law and Regulation**, Wahid Winarto & Parwoto sketch a global legal framework for green-digital finance; Daniel Taborda & Nuno Lemos Jorge assess the fiscal impact of corporate-income-tax exemptions for Portuguese municipal associations; Ana Regina Ribeiro, Ana Dinis & Sara Serra

dissect the Administrative Arbitration Centre's (CAAD) case-law on the SIFIDE R&D incentive; Anwar Noori Khaleel & Raid Naji Ahmed explore how income from intellectual-property rights is—or should be—taxed; Ilimbek Kubatov and colleagues provide a comparative study of executive co-operation on tax security; and Ricardo Sousa da Cunha analyses how Portugal's constitution allocates administrative discretion and the safeguards this offers for institutional accountability. Adélio Geraldino do Rosário Câmara & José Noronha Rodrigues trace a century of disciplinary law inside Portugal's National Republican Guard (GNR), focusing on Article 124 RDGNR's compulsory, non-suspensive hierarchical appeal, and weigh what aligning that rule with Articles 20 and 268 of the Constitution would mean for effective judicial protection. Finally, Luís Manuel Pica revisits the shifting rules on reinvesting real-estate capital gains to defer personal-income-tax liability.

Wahid Winarto & Parwoto trace the rapid rise of green digital finance and gauge what a truly international regulatory framework could mean for steering fintech innovation toward the Sustainable Development Goals. Drawing on climate-finance policy papers, SDG metrics and a comparative scan of blockchain, AI, big-data and IoT use-cases, they unpack both the benefits—cheaper, data-rich capital flows for green projects, real-time transparency and cross-border crowdfunding—and the persistent hurdles—cyber-security gaps, fragmented disclosure standards, consumer-protection blind spots and slow-moving regulators—on the path to a coherent global green-digital finance architecture.

Daniel Taborda & Nuno Lemos Jorge trace the piecemeal evolution of Portugal's corporate-income-tax exemption for associações de municípios and gauge what a sharper perimeter would mean for local-government finance and litigation. Drawing on four decades of Article 9(1)(b) CIRC amendments, a string of 2022-23 Supreme Administrative Court rulings and comparative fiscal-law doctrine, they unpack both the gains—clearer legal certainty, lighter compliance work, fewer court battles and better protection of public-service budgets—and the lingering hurdles—blurred lines between “public task” and “economic activity”, potential competition distortions, revenue-loss fears and patchy guidance to municipalities—on the road to a coherent, litigation-proof exemption regime.

Ana Regina Ribeiro, Ana Dinis & Sara Serra trace how Portugal's Tax and Customs Authority (AT) audits the R&D tax-credit scheme SIFIDE II and gauge what the growing stack of arbitral rulings from the Administrative Arbitration Centre (CAAD) means for fiscal certainty and corporate innovation. Drawing on eight years of CAAD awards, AT audit manuals and OECD R&D-accounting guidelines, the authors unpack both the upside—clearer jurisprudential guidance on eligible R&D costs, a taxpayer-friendly success rate that encourages investment, and stronger pressure on AT to sharpen its risk-selection models—and the persistent hurdles—opaque audit triggers, uneven evidentiary standards, a high reversal rate of AT corrections, mounting litigation costs, and the threat of retroactive claw-backs—on the road to a coherent, litigation-proof SIFIDE framework.

Anwar Noori Khaleel & Raid Naji Ahmed trace the treaty-based and constitutional foundations for subjecting income from intellectual-property rights to income tax in Iraq (and peer MENA systems) and gauge what that architecture means for future tax-policy design. Drawing on double-taxation agreements, OECD model conventions, national constitutions and income-tax statutes from Iraq, Jordan, Egypt and France, the authors unpack both the gains—stronger treaty-compliance, clearer legal certainty for multinational licensors, prevention of double-non-taxation and a broader revenue base for governments—and the sticking points—conflicting hierarchy of norms (treaties vs. domestic law), patchy legislative wording, administrative-capacity gaps and the risk of discouraging innovation if rates outpace regional competitors—on the road to a coherent, treaty-aligned regime for taxing IP income.

Ilimbek Kubatov, Alimardonbek Mamasaidov, Makhmud Oitemirov, Urmat Amanaliev & Nargiza Kuramaeva trace how Kyrgyzstan's executive authorities coordinate (or fail to coordinate) in the pursuit of tax security and gauge what deeper inter-agency cooperation plus digitalisation could mean for shrinking the shadow economy. Drawing on Kyrgyz constitutional and tax-code provisions, UN-OECD anti-evasion programmes, and comparative case studies from Estonia, the Netherlands, Singapore, Sweden, Germany and Canada, the authors unpack both the gains—quicker e-reporting, richer risk analytics, lower evasion rates and a demonstrably smaller shadow economy (10-15 % of GDP in highly digitalised

Estonia)—and the persistent hurdles—legal overlaps, weak data-sharing protocols, under-funded IT systems and limited human-capital in tax, customs and financial-crime units—on the road to a coherent, digitally-enabled tax-security framework.

Ricardo Sousa da Cunha traces how Portugal’s public-law community is reframing administrative discretion as a “constitutional division of labour” shared by Parliament, the administration and the courts—and gauges what that reframing means for rule-of-law control in 2025 and beyond. Drawing on four decades of Portuguese case-law and doctrine (from García de Enterría to the 2015 Code of Administrative Procedure), plus comparative constitutional theory, he unpacks both the promised gains—stronger legislative responsibility for indeterminate norms, evidence-based decision-making inside agencies, and a judicial review that finally moves past the old “immunities of the State”—and the hurdles that remain—persistent statutory vagueness, patchy probative practice during administrative procedures, fears of over-judicialisation and the need to revise CPA articles 55 and 115-ff. on the road to a fully integrated, legality-driven discretion model.

Adélio Geraldino do Rosário Câmara & José Noronha Rodrigues trace a century of disciplinary law inside Portugal’s National Republican Guard (GNR)—zeroing in on Article 124 RDGNR’s compulsory, non-suspensive hierarchical appeal—and weigh what aligning that rule with Articles 20 and 268 of the Constitution would mean for effective judicial protection. Drawing on Constitutional-Court precedents, the 1999 (and 2014-amended) GNR Discipline Regulation, the 2015 Code of Administrative Procedure and EU gendarmerie comparators, they highlight advantages—preserved military discipline, an internal self-correction filter, and tolling of limitation periods—and issues—delayed court access, onerous proof burdens on rank-and-file, mixed guidance on suspensive effect and lingering constitutional doubt—pointing toward a streamlined, constitution-proof disciplinary-appeal regime.

Luís Manuel Pica traces Portugal’s ever-shifting rules on reinvesting real-estate capital gains in order to avoid personal-income-tax (IRS) liability and gauges what the latest tweaks—Law 56/2023 and Decree-Law 57/2024—mean for taxpayers’ constitutional rights. Drawing on decades of Constitutional Court

case-law, Article 10-CIRS doctrine and fresh anti-abuse jurisprudence from CAAD and the Southern Administrative Court, he unpacks both the upside—narrower loopholes, stronger anti-abuse screening (12-month tax-domicile test), a closer link to the ability-to-pay principle and greater horizontal equity—and the stubborn hurdles—possible “inauthentic retroactivity” that upsets legitimate expectations, formalistic proof burdens, lingering legal uncertainty and heavier compliance costs for ordinary home-sellers—on the road to a constitution-proof, trust-enhancing regime for real-estate capital-gains reinvestment.

In the sphere of ***Criminal Law and Forensic Investigation***, Lala Mammadova scrutinises the legitimacy of *in absentia* trials in Azerbaijan, while Joaquim Ramalho revisits reflex actions as a limiting factor in criminal culpability. Anastasiia Chystiakova and co-authors deploy Big-Data analytics to enhance the investigation of corruption offences; Viktor Sezonov’s group confronts the evidential challenges posed by digital-document forgery and cryptocurrency-related crime.

Lala Mammadova traces how Azerbaijan’s 2023-24 criminal-procedure reforms brought *in absentia* trials into the code and gauges what that infusion means for the country’s struggle to balance judicial efficiency with Article 6 ECHR fair-trial rights during its post-Soviet legal transition. Drawing on ECHR case law (*Sejdovic, Poitrimol*), Chapter LIV-II of the new Criminal Procedure Code, and a comparative reading of the more mature frameworks in Italy, Germany and Turkey, she unpacks both the gains—faster resolutions for terrorism and organised-crime cases, mandatory defence counsel, appeal rights, a visible step toward SDG 16 “peace, justice & strong institutions”—and the lingering hurdles—patchy defendant notification, weak post-trial remedy enforcement, limited judicial experience and the ever-present risk that efficiency will trump due-process guarantees—on the road to a rights-compatible, credibility-enhancing regime for trials *in absentia*.

Joaquim Ramalho traces the long-running doctrinal hunt for what counts as a “criminally relevant action” and gauges what bringing modern neuroscience into the debate means for culpability in Portuguese (and wider continental)

criminal law. Drawing on classic and post-finalist action theory, recent Portuguese scholarship and breakthrough research on reflex arcs and unconscious motor responses, he unpacks both the upsides—a sharper boundary between voluntary conduct and involuntary reflexes, fairer limits on criminal liability, and a doctrinal bridge to the emerging field of neurolaw—and the stubborn hurdles—evidentiary headaches in proving whether behaviour was truly reflexive, doctrinal fragmentation over free will vs. determinism, and the risk that over-reliance on brain science could blur normative judgments—on the road to a neuroscience-aware, rights-protective model of criminal attribution.

Viktor Sezonov, Oleksandr Yukhno, Olena Martovytska, Hennadii Hlovenko & Inna Strok trace how Ukraine's law-enforcement system is refocusing forensic expertise to confront a surge in digital-document forgery and cryptocurrency crime, and gauge what a tighter procedural framework would mean for investigators, courts and economic security alike. Drawing on Ukraine's Criminal Procedure Code, recent case files and comparative forensics literature, the authors unpack both the upside—specialised economic-forensics tools that can follow blockchain money trails, multi-disciplinary labs that combine handwriting, technical-document and computer examinations, and clearer asset-recovery routes—and the stubborn hurdles—no standard methodology for analysing blockchain-based assets, patchy legislation, uneven sample quality and the need to enshrine complex, repeated and commission-based examinations (they propose amending CPC art. 69)—on the road to a coherent, technology-ready forensic regime

Our single contribution to **Private Law** sees Maria José Magalhães Silva illuminate creditors' remedies by analysing the attachment of vehicles subject to retention of title.

Maria José Magalhães Silva traces how Portugal's execution courts and registry offices grapple with the attachment (penhora) of a motor-vehicle that is already encumbered by a retention-of-title clause in favour of the very creditor who is enforcing the debt—and gauges what firmer registry guidelines would mean for financiers, debtors and registrars alike. Drawing on four decades of

Civil-Code commentary, the Supreme Court's uniform judgment 10/2008, recent IRN circulars and front-line registry practice, she unpacks both the upside—clearer priority rules, smoother simultaneous cancellation of the reservation and entry of the seizure, and less forum-shopping among enforcement agents—and the stubborn hurdles—doctrinal splits over third-party reservations, conflicting registry options (definitive record, provisional note or outright refusal), timing gaps that could leave the creditor briefly unsecured, and persisting uncertainty about whether Article 824 CC cancels the reservation automatically at the auction stage—on the road to a litigation-proof, registration-friendly model for enforcing secured vehicle sales.

Finally, five articles address issues in *Legal Theory and Political Thought*. Nguyen Vo Anh distills comparative lessons on public-sector talent management from the United States and China for Vietnam; Delia Magherescu analyses how multiple, overlapping crises have reshaped human-trafficking patterns in South-East Europe; Matanat Asgarova and Mehriban Babakhanova interrogate the permissible limits on civil-society freedoms in contemporary democracies; Serhii Ablamskyi and colleagues assess Ukraine's legal adaptation amid rapid digital transformation; and Álvaro González-Juliana with Maria Júlia Ildefonso Mendonça explore how opening the “black box” of public-sector algorithms could strengthen democratic accountability.

Nguyen Vo Anh traces how the United States and China design public-sector talent-management regimes and gauges what those diverging models can teach Vietnam as it overhauls its own civil-service system. Drawing on civil-service statutes, national talent strategies, government reports and a sweep of HR-management scholarship, the author unpacks both the pay-offs—clearer recruitment pipelines, merit-based promotion, competitive (often non-wage) benefits and workforce planning tied to long-term national goals—and the stubborn road-blocks—tension between political loyalty and meritocracy, fragmented agency coordination, budget constraints and uneven training standards—on the path to a modern, cohesive Vietnamese talent policy.

Delia Magherescu traces how a stack of concurrent crises—the Covid-19 pandemic, Russia’s war in Ukraine, irregular-migration surges and the post-2022 energy--inflation shock—has reshaped trafficking in human beings (THB) across Southeast Europe, and gauges what this multi-crisis setting means for criminal-justice policy, victim protection and regional security. Drawing on Directive 2011/36/EU, Eurostat/UN data, more than a dozen recent THB judgments from Greek, Romanian, Bulgarian and Serbian courts, and a wide sweep of criminological literature, she unpacks both the potential gains—sharper risk-profiling tools, stronger cross-border police cooperation, jurisprudential guidance that flags pandemic-era modus operandi, and new leverage for victim-centred remedies—and the stubborn hurdles—resource-starved agencies juggling overlapping emergencies, blurred lines between smuggling and trafficking, financial-crisis vulnerabilities that enlarge the victim pool, and legal fragmentation that still lets traffickers exploit jurisdictional gaps—on the road to a crisis-resilient, prevention-driven anti-trafficking framework.

Matanat Asgarova & Mehriban Eldar Kizi Babakhanova trace how even the world’s most developed democracies still impose – and often overstretch – limits on civil-society freedoms, and gauge what tightening or loosening those limits means for the everyday enjoyment of human rights in the 2020s. Drawing on 38 scholarly and official sources, ECHR case-law (A v. UK, *Handyside*), workplace-discrimination statistics from the EU and US, and a comparative scan of the USA, France, Germany, the UK and Turkey, the authors unpack both the potential gains—clear criteria for a vibrant civil society (private property, market economy, democratic institutions, openness and international engagement) and a roadmap for balancing security with liberty—and the stubborn hurdles—pervasive discrimination by race, religion, gender and sexuality, the use of national-security rhetoric to curb speech and assembly, unequal access to education and health, and the ever-present risk that emergency measures become permanent—on the path to a rights-protective yet security-conscious democratic order.

Serhii Ablamskyi, Anna Kavunská, Oleksandr Perederii, Oleksandr Tymofiyiv & Achmad Zuhdi trace Ukraine’s scramble to retrofit its entire legal system for the age of hyper-digitalisation and gauge what a unified, EU-aligned reform strategy could mean for cybersecurity, public services and economic

resilience. Drawing on Ukraine's post-2019 digital statutes, 2023 cyber-crime metrics, a side-by-side comparison with EU, U.S., Chinese and Japanese digital-law models, and forecasting methods borrowed from tech-policy studies, the authors unpack both the upside—clearer rules for digital entrepreneurship, nationwide “Diia-style” e-government services, blockchain-anchored transparency, stronger e-justice and anti-corruption toolkits—and the stubborn hurdles—Russian cyber-warfare pressure, regulatory fragmentation, weak inter-agency coordination, a yawning digital divide and fragile public trust—on the road to a coherent, crisis-proof digital-legal framework for Ukraine.

Álvaro González-Juliana & Maria Júlia Ildefonso Mendonça trace the fast-moving effort to place public-sector algorithms under genuine social control and gauge what forcing the “black box” open would mean for democratic accountability in Portugal (and, by extension, the EU). Drawing on the brand-new EU Artificial Intelligence Act (Reg. 2024/1689), Portugal’s LADA access-to-information statute and a century’s worth of transparency doctrine, they unpack both the promised gains—a human-in-the-loop safeguard (“reserva de humanidade”), real-time civic scrutiny, error-correction before harm spreads, and a trust dividend for digital government—and the stubborn hurdles—trade-secret shields, deep technical opacity, missing human-readable documentation and an overstretched administration that still lacks AI-literate staff—on the road to an explainable, rights-compatible AI governance model

The two *Jurisprudential Commentaries* that close the issue bring Gil Moreira dos Santos’s reflections on condominium governance into dialogue with Jeovet Baca Virginia’s study of symbolic reasoning in *Maktouf and Damjanović v. Bosnia and Herzegovina*, centring on Judge Paulo Pinto de Albuquerque’s separate opinion.

Gil Moreira dos Santos traces how Portuguese case-law is recalibrating the duty of diligence that condominium owners must exercise vis-à-vis the builder when a development is split into several blocks—and gauges what the Porto Court of Appeal’s judgment of 8 April 2024 (Proc. 24620/15.1T9PRT-P1) means for forfeiture of rights and contract termination. Drawing on Article 1225 ff. of the

Civil Code, four decades of Supreme Court precedents and comparative writings on phased construction, he unpacks both the gains—clearer guidance that each block can trigger its *own* notice period, a stricter timeline that curbs opportunistic “wait-and-see” strategies, and greater symmetry between buyer diligence and builder warranty—and the hurdles—proof burdens on condominium boards, uncertainty over when the clock starts for common-area defects, and the risk that scattered deadlines splinter collective bargaining power—on the road to a balanced, litigation-proof regime for multi-block condominiums.

J. B. Virgínia traces how the European Court of Human Rights dealt with non-retroactivity and *lex mitior* in the war-crimes case *Maktouf & Damjanović v. Bosnia-Herzegovina*—and gauges what Judge Paulo Pinto de Albuquerque’s concurring opinion (joined by Judge Vučinić) means for the moral authority of criminal law in transitional-justice settings. Drawing on Article 7 ECHR, a century of *nullum crimen* doctrine and comparative sentencing practice, the author unpacks both the gains—a renewed insistence that even atrocity trials must respect the *kinder* law, a separation-of-powers reading that elevates judicial guardianship of human dignity, and an interpretive bridge between European and universal human-rights instruments—and the hurdles—domestic pressure for harsher retroactive penalties, divergent national sentencing grids that complicate *lex mitior* calculus, and the enduring moral tension between retribution and legality—on the road to a principled, rights-compatible model for post-conflict criminal justice.

As an open-access journal indexed in Scopus and Web of Science – ESCI, the *Revista Jurídica Portucalense* remains committed to rigorous, internationally relevant scholarship in Portuguese, English, French, and Spanish. We warmly thank all authors for their contributions and extend particular gratitude to our peer reviewers—Anthony Murphy, Armando Rocha, Bella Gjylbehare Murati, Bruno Leonardo Câmara Carrá, Catarina Salgado, Clotilde Celorico Palma, Clovis Alberto Volpe Filho, Daniela Castilhos, Deolinda Meira, Doglas Cesar Lucas, Ehlimana Mimisevic, Evanthia Balla, Eva Dias Costa, Eva Macedo, Fátima Pacheco, Fernando Horta Tavares, Gil Moreira dos Santos, Gonçalo Sopas de Melo Bandeira, Huyen Nguyen Thanh, João Ferreira Dias, João Proença Xavier,

José Augusto Silva Lopes, José Augusto Guerreiro, José Noronha Rodrigues, Joana Covelo Abreu, Junior Mumbala Abelungu, Julio Jorge Urbina, Margarita Orozco González, Manuel Lopes, Maria Emília Teixeira, Maria Miguel Carvalho, Marisa Dinis, Miguel Serra, Nguyen Thi Anh Hong, Olena Martovytska, Olívia Carvalho, Pablo García Molina, Pascoal Pereira, Patrícia Anjos Azevedo, Paula Castro Silveira, Paulo Alves Sousa Vasconcelos, Paulo Gomes, Paulo Renato Jesus, Pedro Amauri Oliveira, Pinar Kadioglu, Renato Neto, Rita Alfaiate, Rui Polónia, Sanja Djajić, Sónia Carvalho, Sónia Rolland Sobral, Soraya Nour, Suhayla Viana, Susana Rodrigues Aldeia, Tatiana Morais, Tiago Martins Fernandes, Tiurma Mangihut Pitta Allagan, Vanda Amaro Dias, Virgílio Machado, Zamira Assis, Christian Kaunert, Fernando Moreira, and Ana Paula Brandão—whose expert assessments were indispensable to maintaining our scholarly standards.

We are grateful to Mónica Martinez de Campos, who led the journal as General Editor from 2013 until January 2025 and whose counsel continues to enrich our vision. We also take this opportunity to welcome our new Editorial Board members—Holger Hestermeyer, Paulo Canelas de Castro, and Zekeriya Kursat—and our new Assistant Editors: Rui Garrido, Cátia Marques Cebola and André Pereira Matos (appointed February 2025), Maria Emilia Teixeira (appointed March 2025), and Ana Rita Gil (appointed April 2025).

We trust that this issue will offer stimulating perspectives and foster meaningful academic debate.

Fátima Castro Moreira

Editor-in-Chief, *Revista Jurídica Portucalense*