Public Governance, Administration and Finances Law Review Vol. 9. No. 2. (2024) • 25–40.

DOI: 10.53116/pgaflr.7312

Vulnerability and Resilience

A Short Introduction to the Challenges of Administrative Law and Public Governance in Uncertainty's Era

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Submitted: 22 March 2024 | Accepted: 17 May 2024 | Published online: 26 August 2024

Abstract: This paper aims to contribute to a reflection on the main challenges faced by today's societies and so essentially seeks to draw attention to the importance of deepening the connections between administrative law and public governance. For this purpose, the paper will reflect on a framework of tension between a vulnerable society and the need for it to become resilient, in association with disruptive phenomena such as the pandemic, globalisation and the digital transition. In this sense, the necessarily introductory exercise that we propose here first involves an approximation to the concept of 'vulnerability', particularly in the spectrum of administrative law, so that subsequently it is possible to make clear that there is a need for greater responsiveness, and hence 'resilience', on the part of public authorities. This paper has been drawn up in reference to the dynamic but complex intersection between public policies and instruments of democratic governance and legal regulation, based on a matrix that privileges human dignity and fundamental constitutional values.

Keywords: public governance, administrative law, uncertainty, vulnerability, resilience, sustainable development

1. General framework

The new social reality, highly sophisticated and complex and dominated by the advancement of science and technology, obliges the jurist to reflect on the present and learn to cope with an uncertain and insecure future from which not even a certain scientific elitism can escape. This means that while crossing thematic valleys and escarpments in this *Risk Society* (Beck, 1992), which we understand as also being the

society of ignorant knowledge[1] of which we are a part, jurisprudence and its practitioners need to open to new social and political issues without ever losing their lodestone. Namely, the defence of the essential values of the community, a community, which is increasingly global and technological, and therefore also increasingly disruptive, and of the rights of its constituent individuals.

Furthermore, if public law, and especially administrative law, has inscribed in its matrix an innate vocation to "interpret the signs of the times" (Garcia, 2018, p. 33), then this can only be done through the combination between law and public policies. Perhaps more precisely, one should say by linking law and (public) governance, by which we mean essentially "a new way of looking at the exercise of public powers", based on "methodologies that promote dialogue, cooperation and networking" (Roque, 2021b, p. 24; Frediani, 2021, p. 6). Therefore, it can be said that public governance cannot dispense with "the experience and knowledge of Legal Science", even if what is at stake is not only "to assess the legality of the government measures adopted, but also to contribute to ensuring that planning, organization, operation and control models that achieve the purposes sought by the legislator itself are implemented". This is because "no (subjective) right exists without the public apparatus being able to execute the public policies that reflect the majority will that implements, every day, the constitutional project of each People" (Roque, 2021b, p. 14). Clearly, this dynamic convergence between law and public governance results in a significant set of new legal (sub)branches, or at least, new social, political, and legal paradigms.[2] This sounds precisely like the *administrative law of resilience,* and, *a fortiori, public governance of resilience* – which had a privileged scenario of development in the pandemic and post-pandemic context. Fundamentally, the new paradigm of state and administration, the law and public governance of resilience takes the idea of a vulnerable society as its main premise and axis of gravity. In fact, in the translation from the original *Verwaltungsrecht der vulnerablen Gesellschaft* this new paradigm can also refer to an "Administrative Law of the Vulnerable Society" (Rixen, 2021, pp. 37–67), such is the interrelationship between vulnerability and resilience, taken simultaneously as characteristics of today's society and challenges for law and public governance.

In fact, if the topic of vulnerability is not necessarily new, since it cannot be denied that it was present in pre-pandemic legal-political thinking, what has changed substantially is its perspective: if in the pre-pandemic context vulnerability was seen essentially from the point of view of the individual, with the pandemic it is now seen mainly from the perspective of the fragility and fragilities of society as a whole and of the law itself

[1] We are absolutely in agreement with Maria da Glória Garcia, when she states that "there are areas of ignorance that no one can address", not even in the face of the expansion of scientific and technical knowledge, hence, as she also says, "one must conclude that it is not knowledge that is the reality that globally unifies men", but ignorance (Garcia, 2018, p. 232). Also referring to a paradigm of "irreducible ignorance" (Frediani, 2021, p. 9).

[2] It may make sense here to recall the thinking of Edgar Morin, an author who has asserted that there is a need to recognise the uncertainty and unpredictability inherent to social reality, and who has therefore called for a complex, broader and transdisciplinary approach around factors such as social and technological evolution (cf. Morin, 2017). Furthermore, it is particularly important to highlight the position of Emiliano Frediani that "the precautionary principle ends up determining a paradigm shift: from the 'wait and see' model we move to an approach based on the idea of maximum caution expressed by 'better safe than sorry' (Frediani, 2021, p. 8).

(Pinto, 2021, pp. 186–187). Therefore, it is here that the idea of an administrative law of resilience begins to take shape, a law capable of better dealing with the consequences associated with the vulnerability of society, i.e. a law of "risk management" in an uncertain era of digital transition and large-scale phenomena (cf. Rixen, 2021, pp. 44–45).

2. Vulnerability: A new way of looking at the person, society and law

2.1. A legal definition of 'vulnerability'

When systemising some concepts, and starting with the notion of *vulnerability,* it should be noted that this is not only a legal concept, but is widely discussed in other scientific fields, namely in social sciences, religious sciences and bioethics. Vulnerability "is, above all, our ontological condition", and "the reason for our vulnerability is based on the fact that it is not possible for us to close ourselves from within: the human being is openness", and, in this sense, our openness "represents our common vulnerability" (Mendonça, 2021, p. 76). This awareness of human frailty is essential for understanding vulnerability in the field of law, since the "center of the constitutional political project" is none other than the human person, who is simultaneously complex, plural and dynamic (Canotilho, 2022, p. 145) and, for that reason, vulnerable. So clearly, the term vulnerability, precisely denoting relativity or, perhaps better said, "human interdependence", either in a positive sense, in the direct sense of the necessary cooperation between people for the most diverse goals of social development, or in a negative sense, considering that the action of some causes either structural or individual harm or loss to others, is not only ontological, but also social (Liedo, 2021, pp. 244–246). Nowadays, it is clear that no one can remain "proudly alone".

In generic and simplistic terms, the term vulnerability indicates a situation of 'fragility' or the 'inability' of individuals to react to certain traumatic events, whether natural, political or socio-economic in origin. Some of the most paradigmatic examples that have dominated our century are the ruinous financial crises, climate change, the Covid–19 pandemic, the wars in Ukraine and the Middle East, the migration and refugee crises, and the problem of housing and poverty. These crises clearly demonstrate that vulnerability is associated with insecurity, dependency and lack of protection. In many circumstances, vulnerability aggravates the risk of exclusion and segregation, leading us to assume that it is both collective and individual (cf. Leão, 2022, pp. 95–96) and, consequently, linked to the risk (or risks) to which certain groups of people are (or may be) most exposed; these are sets of diverse circumstances that by generating situations of vulnerability lead to structural disparities that crystallise over time in society, thus preventing its integral democratic progress. Vulnerability as a legal concept thus refers prima facie to the specific constitutional position of individuals, i.e. a 'relational' and 'contextual' position (Canotilho, 2022, p. 157; Fineman, 2010, p. 255), which is expressed in the "mechanisms that guarantee their effective representation in the exercise of public powers" and in the "theoretical and practical-methodological opportunities to see their

claims recognized and debated" (Canotilho, 2022, p. 144; cf. Liedo, 2021, pp. 251–252). Taking account of vulnerability thus creates, in a challenging way, new fundamental subjective rights (or at least rights that are not reducible to conventional ones), new public policies and, of course, new legal mechanisms. On this assumption, and as Mariana Canotilho notes, the "*community social dimension* (Portuguese: dimensão social comunitária) is the starting point for the dogmatic construction of a *constitutional law of the commons* (Portuguese: direito constitucional do comum)" (Canotilho, 2022, p. 144). In other words, the recognition of vulnerability and of its circumstances seeks precisely to dethrone both the notion close to a caste system-based social model and the notion rooted exclusively in subjective individuality. This means that vulnerability can and should be assumed to be a window of opportunity for a new political-legal vision: vulnerability implies, and must imply, a displacement from the "I" to the "We", such that questions arise from it, as Maria da Glória Garcia (2018, p. 238) explains: How should we organise ourselves in a political and juridical community in such a way as to make possible the "continnum" of life now threatened? How should we reinvent our community life based on uncertainties and indeterminations? How can we build as much trust as possible in the community and guarantee freedom in it?

Thus, while it is not advisable to cancel the analysis of specific vulnerabilities, it is even less advisable, and would be ineffective, to merely take a situational approach. This means, therefore, that the political-legal analysis of vulnerability must be transversal, structural and global.[3]

Based on the above, and assuming that there is an inseparable link between constitutional law and administrative law, it will also be appropriate to state with recourse to a well-known expression that the administrative law of resilience is this constitutional law of the common *materialised*. From this essential shared path to which public governance is linked, only "an important project of social justice" can follow, i.e. a responsiveness "to the natural and constant condition of vulnerability" (Leão, 2022, p. 92),[4] which without neglecting the essential collective responsibility, is capable of mitigating society's "general loss of functionality" (and not merely the loss of some of its subsystems) (Rixen, 2021, p. 39).

2.2. Vulnerability in administrative law – Brief notes

Given the (current) profile of vulnerability, it is simply naïve to think that modern administrative law, being based on an idea of parity between administration and individuals, would be unaffected by the subject. However, it is not only the legal-materialist view of administration that does not correspond to the reality of the situation, but also the lack of attention paid to the issue of vulnerability in administrative

[3] Similarly, "[…] vulnerability is a relational issue, and the conditions that determine it rest on the structure of a society". "In order to be able to put a structural vision into play, it is also necessary to broaden the concept of vulnerability beyond the particular autonomy deficit" (Liedo, 2021, p. 252).

[4] In fact, this project has to contain a "reasonable combination" between "ethics of justice" and "ethics of care", which can guide the elaboration of criteria for action to face situations of vulnerability (Liedo, 2021, p. 253).

law, especially compared to the attention that it has been paid within the spectrum of private law; this contributes to the development of a very difficult and complex picture (cf. Silva, 2022, pp. 11–12). Therefore, it is necessary to raise (or re-embrace) awareness of the fact that not only is it a duty of administrative entities to protect individuals, and in particular, their fundamental rights, but it is also essential to exercise public administrative powers in a way that guarantees this protection and increases the resilience of citizens. However, this awareness results in another paradoxical finding: the strengthening of public administrative powers as a way of ensuring resilience, simultaneously contributes to situations of vulnerability: either because it accentuates legal and material imbalances between the administration and individuals, or because it generates multiple uncertainties, especially in the application of norms, and in particular in contexts of high adversity (cf. Silva, 2022, pp. 15–18). Finally, it can also be said that if administrative action must combat vulnerability, it also constitutes itself an agent of "institutional vulnerability".[5] Without this awareness, public governance and the administrative law of resilience would be seriously compromised and might even end up dead on arrival, so to speak. Therefore, the consideration of vulnerability in the spectrum of administrative law implies the reconciliation of the values and functions of the defence of the public interest, and the legitimacy of the exercise of administrative powers, as well as the protection of the legally protected rights and interests of citizens. As such, we can only agree that the starting point lies in the need to "analyse to what extent the existence of an inequality between the administration and the individual generates, as a rule, a *vulnerability* for that latter" (Silva, 2022, p. 21). This is not in order to annihilate every kind of vulnerability, but in order to enable an adequate, just and democratic response to situations of vulnerability (cf. Liedo, 2021, p. 254; Silva, 2022, p. 21) to be provided, i.e. a response that strikes a healthy balance without giving up one or another of the functions assigned to public authorities and public governance.

There are many examples of the existence of vulnerability in the field of administrative law. By way of illustration, consider what happened in the context of the pandemic, with a broad reinforcement of public powers, highlighting the attribution of broad sanctioning powers to administrative entities; or the widespread imposition of mandatory mask-wearing and mandatory curfews, as well as dependence on social benefits and subsidies provided by the State. More recently, in the context of the housing crisis, the possibility of compulsory leasing being mandated by public authorities; or in the field of digital transition, the dematerialisation of administrative procedures and the use of artificial intelligence for administrative decision-making, which entail high risks related to the depersonalisation of public administration, lack of decision-making transparency, digital exclusion and new forms of discrimination (cf. Otero, 2019, pp. 488–489). Moreover, in the final analysis, it is reasonable to say, especially in connection with corruption that public institutions themselves can also become vulnerable and, therefore, less resilient (Fineman, 2010, p. 256).

[5] In this regard, and alluding to digital governance, "[t]he vulnerable action of the State, or the so-called 'institutional vulnerability', is present in the selective action of the State when developing public policies that, in theory, would be able to mitigate the situations of vulnerability experienced by sections of the population" (Freitas, 2022, pp. 118–119).

While it is very difficult, one might even say impossible, for the actions of public authorities not to create vulnerable situations for individuals, it should also be borne in mind that across the spectrum of administrative law, there is a constitutional and legal obligation to protect the public interest while also protecting the rights and interests of citizens.[6] This is because "in addition to constituting another facet or another angle of interpretation of the functions of legitimation and conditioning of administrative action, the protection of citizens' rights has to be autonomous as an essential and autonomous function of administrative law of the democratic rule of law", in such a way that "in addition to the responsibility of creating mechanisms for the protection of citizens, both in relation with the administration and in the legal and social relations between citizens, administrative law also has the function of enabling the practical and effective realisation of administrative citizenship, social rights and, in general, the rights to benefits from the State [...], which, invariably, call for an active and decisive intervention of the public administration" (Gonçalves, 2019, pp. 98–99). We would even add that while the path to balance between the various functions of democratic administrative law is often thorny, it is also true that this search highlights considerably the need to embark on a new model of public governance, which is more than participatory, whether it assumes, or should assume, as collaborative.[7] In these terms, the implementation of administrative citizenship, as an 'antidote' to vulnerability, can therefore only mean active and decisive intervention, and therefore co-responsibility, of citizens.

3. Some perspectives and challenges around administrative law and public governance of resilience

3.1. The (political-legal) meaning of 'resilience'

As far as can be gleaned from what has been said so far, resilience is not only the flip side of vulnerability, but also represents a counter-response or counter-reaction. That said, what is the scope of resilience?

Among the various adjectives that are used to refer to state administration and to administrative law itself (for example, consider the "regulatory state", the "infrastructure administration" and the "administrative law of regulation"), it can be said that taking account of vulnerability allows us to assign an adjective to the administrative law of our time, as we have already said, the *administrative law of resilience*. This term ('resilience') is actually one of the most widely used today, and (along with climate change and digital

[6] Cf. Article 266(1) of the Constitution of the Portuguese Republic; and Article 4 of the Code of Administrative Procedure.

[7] Underlining the differences between the participatory model, which he calls "the handshake" (sic!), and the collaborative model, which he calls "the handshake" (sic!), and reiterating the virtues of the latter in relation to the former, insofar as "the individual is not limited to a reactive and secondary position, intervening throughout the decision-making and executive procedure, as an active subject of the public policies implemented (even if in a position of subordination to the public interest represented by the government)", to which the "way in which governments communicate with public opinion (and vice versa)" contributes (or should contribute)" (Roque, 2021b, pp. 267–269).

transformation) one of the essential pillars of the Portuguese Recovery and Resilience Program: broken down into social, economic and territorial resilience. It is thus associated "with an increase in the capacity to react to crises and to overcome the current and future challenges associated with them", in order "to promote a transformative, lasting, fair, sustainable and inclusive recovery".[8] Operating essentially in the context of socio-ecological theories and contrary to what one might think, resilience cannot relinquish the idea of either transformation or adaptation. This means, essentially, that resilience has in flexibility and resistance its essential and "indissoluble" qualities or conditions (Fortes Martín, 2019, p. 3). This is, keeping the definition adopted by the UNDRR (United Nations Office for Disaster Risk Reduction), "the ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions".[9] As we can see, and as far as we think, there is no resilience without vulnerability (cf. Fineman, 2010, p. 269). Indeed, if vulnerability does not cease to contain a juridical-political-ethical appeal to care and the common, then the responsibility incumbent on public authorities to increase resilience can only be achieved through the implementation of public policies (cf. Liedo, 2021, p. 255), and not just any policies, but such policies, which can enhance flexibility and resistance.

This means that resilience goes beyond mere precaution and prevention. This is because prevention is essentially intended to avoid certain or proven risks, and precaution aims essentially to control potential risks.[10] Meanwhile, resilience seeks to maintain and guarantee the integrity of systems, thus assuming the role of an autonomous legal principle with highly dynamic properties, referring to "an action, a constant movement, a continuous improvement with the aim of achieving the increase or strengthening of one's own resilience" (Fortes Martín, 2019, pp. 15–16, 19).

However, partly due to the relativity and dynamics that are inherent to resilience, the "handicap of its growing juridification lies in how to quantify it and how to determine its threshold of elasticity, as well as how to manage it well", even leading to the invocation of a "resilience of resilience" (Fortes Martín, 2019, p. 20). Even so, the legal-political ethics inherent to the communicative vessels between vulnerability

[8] See https://recuperarportugal.gov.pt/prr-resiliencia/.

[9] Available at www.preventionweb.net/files/7817_UNISDRTerminologyEnglish.pdf.

[10] These principles are well established and have greater relevance in specific areas, such as health and the environment. See in this respect what Article 3(c) of the Environmental Policy Law (Law N.º 19/2014, of 14 April) provides for: "Public action in environmental matters is subject in particular to the following principles: […] prevention and precautions, which require the adoption of anticipatory measures with the aim of obviating or mitigating, as a matter of priority at source, adverse impacts on the environment, whether natural or man-made, both in the face of immediate and concrete dangers and in the face of future and uncertain risks, in the same way as they may establish, in the event of scientific uncertainty, that the burden of proof is on the party claiming the absence of dangers or risks." Consider also the Judgment of the CJEU, Proc.s C 487/17 to C 489/17, of 28-03-2019, according to which "the precautionary principle must be interpreted to the effect that where, following an assessment of the risks, which is as complete as possible having regard to the particular circumstances of the case, it is impossible, in practical terms, for a holder of waste which may be classified under mirror codes to determine the presence of hazardous substances or to assess the hazardous property of that waste, it must be classified as hazardous waste" (n. 62).

and resilience do not dispense with, under penalty of mischaracterisation and loss of meaning, either politicisation or juridification.[11] In this spirit, the guarantee of strengthening of resilience not only plays a role in several of the Sustainable Development Goals associated with the 2030 Agenda, but also seems to be assumed, from a constitutional point of view as being a true fundamental task of the State. It is sufficient to recall that under the terms of Article 9(d) of the Portuguese Constitution, it is incumbent on the State to "promote the well-being and quality of life of the people and real equality among the Portuguese, as well as the realization of economic, social, cultural and environmental rights, through the transformation and modernization of economic and social structures". This means that well-being, as a structuring element of a Western model of State and Society involves, as Paulo Otero (2020, p. 101) says, "an open dimension and progressive realization by all generations of the conditions (material and immaterial) that translate into a reinforcement of the improvement of the quality of life of the human person", that passing through the action of the public authorities, cannot be exhausted in them.[12] Therefore, in our view, there is a strong case for building resilience as a means or form of implementing the constitutional clause of well-being, although this should not mean hyper-interventionism of the State (*rectius,* of the public powers). On the contrary, well-being is to be understood in the light of the Western civilisational matrix as a task for each and every individual.[13]

In line with the foregoing considerations, resilience should be envisioned as a set of public policies aimed at achieving equality, happiness and quality of life in general,[14] whose implementation, tangibility and reinforcement are inevitably guaranteed through the action of public authorities, notably administrative entities, but also through the aforementioned model of collaborative governance, inevitably leading to the assumption of a new discursive mode of legitimation of the exercise of power (cf. Roque, 2021b, p. 33). In short, in a legal-political sense, resilience brings with it both the constitutional clause of well-being and the set of means by which it is effectively implemented and guaranteed, as a reflection of the paradigm of responsiveness (which, while it may have innovative features, is not completely new). Promoting resilience is, therefore, promoting the ability of each and every individual to contribute to the greater good, and thus to a more democratic, supportive, fair and cohesive society.

[11] Also calling for the politicisation of the ethics of care and the "introduction of care tasks into theories of democracy and justice" (Liedo, 2021, p. 255).

[12] It should always be understood that "the principle of human dignity, if it constitutes the foundation of the welfare clause, also ends up introducing a limit to well-being itself as a task of the State, as it entails a limitation to a model of public intervention that is exorbitant on the sphere of civil society: respect for human dignity underlies a rule of subsidiarity or substitutiveness in the action of the State" (Otero, 2020, p. 102).

[13] About the "reciprocity inherent" of membership in society see Fineman (2010, p. 260).

[14] Therefore, it is not surprising that the doctrine regarding the approach to vulnerability has recovered the idea of the need for an authentic 'social responsibility' in guaranteeing well-being. In this respect, although not exactly in the same terms in which we set out our considerations, see Fineman (2010, p. 256).

3.2. Resilience and return to the welfare state – Essential premises

As has already been said, resilience does not oblige or presuppose per se the removal of intervention by public authorities. On the contrary, it can be said that the guarantee of strengthening resilience requires the strengthening of the position of the highest authorities, particularly the exercise of the statutory powers of the administration, but rather demands it. Therefore, once again following Stephan Rixen (2021, p. 61), it can well be said that "without the long range of the autonomy of the Administration in major crises [...] the constitutionally required guarantee of resilience will not be possible to achieve". As such, it is this guarantee of resilience that mobilises a return of the welfare state of law or, if one prefers, its resistance in the face of postmodernity and neoliberal seductions,[15] because, as Jorge Reis Novais (2018, pp. 199–200) also argues, the welfare state of law truly embodies a "legal-constitutional principle that determines the nature and meaning of all state functions", so that "the values and elements on which the liberal characterization of the rule of law was based will not fail to undergo the reformulations that result from the new tasks assumed by the Welfare State of Law". It is therefore strange that, especially in the context of the pandemic, the jus publicist doctrine has been proclaiming the 'failure' of the guarantor administration (Ponce Solé, 2021).[16]

However, if this is the case, the inevitable return (or resistance) to the social rule of law should not mean a kind of omnipotent proclamation of the intervention of the state and the public administration. On the contrary, this return must presuppose the abandonment of a purely mercantilist vision of blind freedom. To put it another way, the need for a return to the rule of social law, which, paradoxically, has always been inscribed in our constitutional order, is the perfect image of the need for an "optimal weighting (Portuguese: ponderação ótima)" of values in constant conflict (Otero, 2019, p. 292). Good and resilient public governance is precisely such governance that without renouncing the values of freedom and individual autonomy, does not allow itself to be held hostage to the interests of economic groups and other lobbies.[17] Good public governance will therefore only be truly good if it does not ignore the importance of the performance of public authorities in the promotion of real equality, non-vulnerability and in the protection and promotion of constitutionally recognised rights (Solé, 2021, p. 4). This reveals once more the dynamic intersection between public governance and (administrative) law, given that if the former does not fail to manifest itself in planning and foresighted action and, therefore, in primary consideration, the truth is that law, allowing the positivisation of values, rights and principles related to it,

[15] In this sense also, referring to the pandemic context, it can be underlined that "The Provider State came into play" (Silva, 2022, p. 16). For further developments about neoliberal administration see Otero (2019, pp. 287–292).

[16] From a constitutional point of view, it is worth recalling what Otero (2020, p. 105) writes, which we fully endorse: "If the Constitution establishes a model of well-being and imposes it as a program of State action in the realization of economic, social and cultural rights, it is important to make it clear that the constitutional text is, at the same time, to give the Public Administration a political protagonism that surpasses anything that the liberals of the constitutional phenomenon could imagine."

[17] Also going so far as to call the social and democratic state of law a "liberating state", which "avoids the domination of society and the citizens who compose it by private factual powers, and guarantees a dignified life" (Solé, 2021, p. 7).

and thus also allowing the active responsibility of the administration to be designed,[18] it undoubtedly contributes to the "institutional quality", that is, to the implementation of public policies and to the proper functioning and development of society (see Solé, 2021, p. 6).

Without these essential assumptions, intimately linked to the idea of the welfare state of law, it is very difficult to speak about resilience at any time.

3.3. The pathway being built (or the concerns and challenges in the implementation of resilient public governance)

As can be seen from the above, the interconnection between vulnerability and resilience not only influences the construction of social and legal institutions, but also constantly demands their reformulation and improvement. Furthermore, in this continuum, there are actually several concerns and challenges that administrative law and public governance are facing. Some of these are considered below.

In the immediate term, it should be underlined that if vulnerability is assumed as a potentially common characteristic of all subjects and given that, none of us is potentially free, a first step towards guaranteeing resilience (and strengthening it) is, as already mentioned, to oblige public authorities to take vulnerability, or rather situations of vulnerability, into account, in order to seek to mitigate its actual impact. However, we immediately face a major challenge: to prevent public authorities' actions from embodying a renaissance of paternalism. In fact, if those who find themselves in a situation of real vulnerability are not totally free, they will never be able to be free if are subject to the paternalism of free public power (cf. Leão, 2022, pp. 101–102). This means that the political and legal consideration of vulnerability, as a prerequisite for ensuring resilience with a view to achieving material equality, has to be compatible with individual autonomy.[19] It is therefore necessary to rethink the model of public governance, based on an obligation – and hence the responsibility – of the public power to build or create the essential conditions for citizens to express themselves freely. To this end through legal regulation, it is necessary to enshrine a fundamental right to happiness as a paradigmatic measure, and to recognise a principle of maximising happiness as a cardinal principle of the public governance of resilience, which, amongst other things, enables the study undertaking of new mechanisms for the acquisition and redistribution of income, new models of work and investment in educational, cultural, creative and leisure development (cf. Roque, 2021b, pp. 45–52; Roque, 2021a, pp. 1204, 1209–1210). In other words, there is an urgent need to rethink the contemporary Western model of social organisation, the essential core of which can never cease to be the human person and their free development (Roque, 2021a, p. 1208).

[18] Precisely associating the return of the welfare state of law to the importance of administrative action and public regulation through the instruments of administrative law (cf. Solé, 2021, p. 8).

[19] Distinguishing 'autonomy' from 'equality' and stressing the importance of the state guaranteeing individual autonomy as a means of achieving freedom, without ignoring the intervening role of the state, especially in promoting equal access and action (Fineman, 2010, pp. 257–262).

Secondly, it is important to question the real capacity of public authorities, especially state authorities, to ensure the strengthening of resilience. As an example, it should be noted that currently in Portugal, according to official data contained in the "Recuperar Portugal" [Recover Portugal] portal, only 22% of the milestones and targets agreed with the European Union, in relation to the Recovery and Resilience Programme (RRP), have been implemented.[20] Furthermore, it is important to bear in mind the problems of digital exclusion, and not to forget that according to OECD data from 2021, despite investment in the digital transition, less than half of citizens and companies in Portugal use digital public services. In addition, there are a number of other risks, such as those related to the storage and processing of personal data or those related to decision-making transparency (or the lack thereof), especially when considering the use of algorithms. There are indeed enormous concerns about this set of issues. In fact, we wonder if we will not witness a paradoxical conjunction between resilience and uncertainty, which instead of mitigating vulnerability will actually increase it.

Thus one example of the real way forward must be through a strong commitment to civic education,[21] which fosters democratic participation and is more responsive to the challenges brought about by changes in traditional power structures; fostering digital literacy and digital citizenship education; the deepening of new forms and networks of cooperation, including the private sector and the cooperative sector, combined with the improvement of various mechanisms for monitoring and effective accountability. Also, it will naturally have to presuppose the legal regulation of the complex and disruptive phenomena linked to technological and global advances, since as Miguel Prata Roque (2021a, p. 1201) reminds us, the public governance and administrative law of the present times, launched on the basis of a "Constitution of the Future", have "to face and understand the new reality of the digitalization of today's societies and virtual networks that crush individual freedoms, the reserve of private intimacy and the right to difference". As such, it is particularly necessary to strengthen the rights to privacy and protection of personal data, to promote a culture of 'open source', accompanied by public investment in technology, equipment and infrastructure, and to limit the exploitation of data by large multinational economic groups, seeking to mitigate the effects of a phenomenon of elevation of technical-scientific power to a 'feudal' level, in particular in relation to the political and legal domain.

In the wake of these considerations, it is essential to emphasise the importance that the European Union has assumed in the legal regulation of these disruptive phenomena. Both the European Commission's Communication entitled *2030 Digital Compass the European way for the Digital Decade,*[22] and more recently the *EU Artificial Intelligence Act* come immediately to mind. In relation to the former, the clear commitment to digital transformation as a means to achieve European resilience should be underlined, suffice it to recall that, as the Commission says, what is intended is nothing more than to "harness

[20] See www.recuperarportugal.gov.pt.

[21] In this context, the Academy can also play a pivotal role, especially through the promotion of curricular structures, courses and events that study and deepen the aspect of public governance, with an eminently multidisciplinary perspective.

[22] See https://shorturl.at/Y9Mjl.

the potential of the digital transformation and help build a healthier and greener society".[23] In this sense, the strategy contained in the Communication is mainly based on the following ideas: providing citizens with digital skills and qualified professionals; investing in the digital transition of both companies and public services; and secure sustainable and efficient digital infrastructure. The *EU Artificial Intelligence Act*[24] also highlights the importance of compatibility between technological innovation and the protection of fundamental rights, sustainability and the democratic rule of law. To this end, the Act prohibits so-called *predictive policing* (in Portuguese: policiamento preditivo), when policing is based exclusively on the definition of a person's profile; as a rule, the Act prohibits the use of remote biometric identification systems by law enforcement entities; and further, it prohibits the manipulation of human behaviour or the exploitation of human vulnerabilities by AI. Similarly, the Act provides for both obligations for high-risk AI systems (e.g. those that cause significant damage to health or the environment), as well as risk assessment and reduction mechanisms, while also providing for the need for transparency and human oversight, while enshrining the right of citizens to complain about artificial intelligence systems. Comparing all this data, it can well be said that the governance of the digital future, on which we are already dependent (see Calzolaio, 2023, pp. 14–18), in which the EU takes on a pioneering role, even supplanting the normative role of the Member States,[25] reflects a clear and close link "to the canons of administrative law" (cf. Farinho, 2023, p. 41), evident in the systems of administrative regulation and proceduralisation of the activity in pursuit of the public interest (cf. Farinho, 2023, pp. 30, 41).

However, there is also another phenomenon: the disruption of normative sources. In fact, not only are the risk contexts extremely favourable to the proliferation of the administration's informal action, as demonstrated in the pandemic scenario, but over the last few years there has been a "relentless *deconstruction of the legal-constitutional order* [Portuguese: desconstrução da ordem jurídico-constitucional], perpetrated by the facts carried into the normative system by the internet and new technologies" (Castro, 2023, p. 153). It is therefore impossible not to notice the blurring of the distinction between legislative and administrative activity, and even the progressive disconnection of normative production with the "democratic radical", leading to new and very diverse centres of normative production (Castro, 2023, p. 168). Without wishing to go into further consideration on the subject here, it should in any case be stressed that the path necessarily passes through (and has to continue to pass through) a "technologically neutral constitutional interpretation", i.e. an interpretation related to the guarantee that the values that shape the constitutional order "must remain intact, despite the disruptive potential propagated by the technological revolution", without prejudice to the fact that in the case of 'obsolete' values, there is nothing to prevent the occurrence of "new constitutional considerations" (Castro, 2023, pp. 67–68). In other words, what is needed is the very resilience of core constitutional values, *prima facie,* the resilience and

[23] Of course, this and other instruments can only be understood in the light of the Digital Agenda for Europe. Regarding the Agenda, for a general framework and further developments see https://shorturl.at/LAstp.

[24] The text adopted can be found at www.europarl.europa.eu/doceo/document/TA-9-2024-0138_EN.pdf.

[25] Speaking even of a process of "invisible and discreet constitutionalisation of the EU, the result of a continuous and tacit integration process", when "state constitutions are no longer total constitutions" (Castro, 2023, pp. 27–34, 35–37).

effectiveness of fundamental rights,[26] from which it becomes possible to project an 'intersection' between "the principle of digital sovereignty" and "digital constitutionalism" (Santaniello, 2022, p. 50).

In this ongoing journey, one should not ignore the importance of associating resilience and sustainability, because if resilience aims to mitigate vulnerability, even if it does face a number of challenges, sustainability is actually one of the fundamental pillars (i.e. a strategy) of resilience. Thus, administrative law and public governance of resilience do not exist (nor make sense) if they do not integrate a strategic vision of sustainability, referring to civic sustainability, social and demographic sustainability, financial sustainability and environmental or ecological sustainability (see Rocha, 2013, pp. 7–10). On the contrary, the depletion of resources, and particularly the exhaustion of public resources, not only leads to external dependence on public authorities, but also introduces a vicious circle, which can be embodied in an increase in the tax burden for example. This leads to greater vulnerability, which in turn leads to less resilience and lower happiness and quality of life. Furthermore, without a clear commitment to demographic sustainability and civic sustainability, there will be a risk of exacerbating territorial asymmetries and undermining certain social systems and subsystems (e.g. the social security system), along with the risk of democratic erosion due to a lack of knowledge or interest in public affairs on the part of the population (on "lack of adhesion of the new generations" see Roque, 2021a, p. 1200), leading in extreme cases to an explosion of populism and extremism.

More than ever, it is imperative to rethink the system of financing social benefits, to rethink and redesign the electoral system and models of democratic participation, while calling on citizens to participate in public affairs and to seriously rethink public policies for territorial planning and cohesion. In the same way, it is necessary to enshrine not only the sustainability of decisions as a true criterion for the legitimacy of public governance (cf. Roque, 2021b, pp. 57–58), but also the creation of tools and principles for environmental and financial sustainability that will ensure a more sustainable and resilient transition. By way of example, it will be important to (continue to) promote mechanisms such as the intermodality of 'environmentally friendly' transport and the systems of deposit and return of materials and waste, and to embrace principles such as preference for the local economy and the circular economy at the constitutional level, as fundamental pillars of the democratic system of current times (see Roque, 2021a, p. 1205).

Finally, and even if it is not exhaustive, it is appropriate to think about the (im)possibility of models of precautionary action by public authorities, which relate to the above considerations and concerns. Above all, what is at stake here is the need to institutionalise a general, legal and operational framework that is sufficiently flexible and resilient to deal with a number of uncertain risks, a framework which, it should be stressed, is different from the constitutional and administrative frameworks for exceptional situations, based on structuring dimensions such as proportionality, non-discrimination,

[26] Also underlining the limits to technical-scientific power by "constitutional norms endowed with direct applicability" (Otero, 2019, p. 460). And even noting that the European Union "seems to want to claim a system of tutelage that connotes it as an area of freedoms and rights, able of ensuring an anthropocentric and personalistic government of innovation" (Allegri, 2021, p. 12).

consistency and cost–benefit assessment, intergenerational balance and weighting based on scientific developments (cf. Frediani, 2021, pp. 11–12).

Of course, many other concerns and challenges could be raised here. In any case, the preceding paragraphs make it undeniable that nothing will be the same as before, and so the path along which law and public governance go together is the only one which leads to resilience.

4. Concluding notes

As we move towards the end of this introduction to administrative law of resilience and public governance, it is important to underline that resilient and sustainable public governance, i.e. governance that mitigates vulnerability is a governance that as the *2023 Agenda for Sustainable Development* reiterates, *cannot leave anyone behind,* but must include everyone, because it concerns everyone (and should be about everyone). Similarly, and in parallel, administrative law must respond to the problems of everyday life, which is constantly changing, highly technological and globalised, and therefore also confusing and uncertain.

In view of the above, the administrative law of resilience will only truly be such if it focuses on problems that affect real people in a real world, and therefore if it is a law, which focuses on communities as a reflection of a "new paradigm of community life" (Garcia, 2018, p. 239). Therefore, once again, using what this author teaches, we must not be afraid to affirm that the law that legitimises the action of the public authorities cannot depart from the law and legal security and certainty, but also cannot be based exclusively on them; in fact, "[d]ealing with the uncertainty of the knowledge that is possessed, in the most diverse areas, with the uncertainty of evolution and social movements, as well as with the lack of knowledge of the complexities that characterize specific situations and determine the good options requires a different compression of the law, which emphasizes precaution and its guiding and pedagogical mission, and is rooted in principles and in people's rights" (Garcia, 2018, p. 251).[27] We believe that this is the foundation that can be called the administrative law of resilience and the public governance of resilience, whose matrix, without denying the progress of science and technology, must nevertheless continue to be based on an anthropocentric conception.

In short, the legal-political model of resilience is the model of a society that, although marked by vulnerability and its circumstances, survives as democratic, plural, interdependent, cooperative and sustainable. If this is not the case, it will be very difficult for us to be able to be resilient and thus to have a livable life worthy of the name. After all, remembering the words of Pope Francis (2022), in an increasingly uncertain and disruptive future, "no one is saved alone". Finally, a further task, which lies in our own hands is to

[27] And, in the sense that "our legal future will pass through other organizational models of normation and new standards in the defense of the human person and his or her 'right to have sustainable rights'", to which I would also add the duties of everyone (Pinto, 2021, p. 197).

prevent the decay of Western democracies, by promoting and implementing good and sustainable public policies, without ever losing sight of fundamental values. Therefore, such policies are the last stronghold of resilience.

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