

Further information regarding the PhD Researcher in European Law for the project RED SPINEL

Coordinated by UvA, the fourth WP on 'The protection of fundamental rights within the EU through expert knowledge, citizen participation and judicial instruments' will focus on the tensions between democratic legitimacy, participation, expert-led mechanisms and judicial review when addressing rights violations. Democratic backsliding often goes together with programmes targeting institutions and instruments that act as 'countermajoritarian mechanism' to executive decision-making. Counter-majoritarian mechanisms and instruments are thought to contribute to democratic legitimacy, including by counterbalancing the power of the elected majorities.

Their aim is to sustain liberal democracies by protecting equality, fundamental rights and the evidence-based nature of decision-making from the sheer power of numbers. The dissensus that is generated by the tension between liberal democracy and these counter-majoritarian mechanisms is at the centre of WP4's agenda. While access to justice is consistently used throughout the EU to enforce liberal democratic norms and to challenge anti-liberal legal pursuits, these same judicial instruments are regularly portrayed by anti-liberal actors as undermining sovereignty or national democracies.

WP4 focuses on the opportunities and challenges that legalism (expertise, frameworks and politics defined by law) rather than democracy encounters in times of crisis. Empirically, it will consider litigation before national courts, the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) in three areas: climate-related decision-making and strategic litigation; decision-making and litigation concerning LGBTIQ+ rights; and decision-making and judicial action on rights of migrants and asylum seekers.

While different in terms of actors, instruments and objectives, these areas offer a useful laboratory to explore the way in which dissensus shapes and is shaped by expert decision-making, the enforcement of fundamental rights and judicial review. To this end, WP4 will: (1) assess the tensions and synergies between participatory mechanisms, expertise and judicial review in protecting fundamental rights and equality within the EU, including in the national context and (2) analyse cases and examples of public participation, strategic litigation and expert knowledge mobilised in response to the challenges of climate change, LGBTIQ+ and discrimination against migrants.

These challenges were also selected because the associated dissensus surrounding them often has a clear gendered dimension. The first set of rights are intrinsically related to sex and gender as they pertain to the individual rights of LGBTIQ+ citizens, whereas the protection of rights in the context of either public participation in climate decision-making or migratory issues have seen their intersectional implications come ever more into focus.