

SIPE XVI Congress: New Public Tasks in Times of Tension
Faculty of law, University of Lisbon
Lisbon, 22 to 24 June 2023

The XVI Congress of SIPE (Societas Iuris Publici Europaei) took place from 22 to 24 June this year (2023) in the Portuguese capital at the Faculty of Law of the University of Lisbon (Universidade de Lisboa, Faculdade de Direito). The topic of this year's Congress was *New Public Tasks in Times of Tension*. SIPE is an association uniting European public law scholars, as well as prominent practitioners in the field of public law. The Association aims to be an academic forum for publicists from different European countries where they can have professional discussions on important and topical public-law issues. It was founded in 2003 in Frankfurt am Main on the initiative of the German Association of Professors of Constitutional Law, particularly in response to the growing influence of European law on the public law of the EU Member States and thus with the objective of exploring this influence more systematically. The strongest representation in the Association has always been, and still is, the the German representation; since 2016, **Jörn Axel Kämmerer** from Bucerius Law School in Hamburg, a German academic, has been its president. Activities of the Association are aimed at organizing regular congresses, which are usually held once a year at a different host university; the working languages of the congresses being English, German and French. Although the Association brings together academics and practising lawyers with a great number of highly-regarded publications behind, the congresses also provide a platform for young academics or PhD candidates to present their research projects or to participate as guests.

The opening section of this year's congress was dedicated to young academics in the *Young Scholars Workshop*. The first speaker was **Pedro Lomba** from the host university with a paper entitled *GDPR Private Enforcement in Portugal: Recent Developments and Consideration*, in which he focused on the issue of so-called class actions in the private-law enforcement of the rules enshrined in the GDPR. He dealt with a possibility of extending the effects of *res iudicata* plea also to persons who were not parties to the proceedings, or a possibility for the rights of individuals to be defended (collectively) in litigation by non-profit organisations dealing specifically with the protection of personal data. **Rui Lanceiro**, from the same university, then presented a paper called *AI and Public Administration - Problems and Opportunities to Come*, in which he addressed some potentially problematic aspects of the use of AI in the decision-making processes of public administration bodies. He spoke, for example, about the issue of reviewability of AI's procedures (especially in terms of competing protection of intellectual property rights of programmers), about the issue of protection of personal data that AI would work with, or about concerns regarding possible discriminatory behaviour on the part of the AI. In a contribution called *The Right to Access to Public Information in the Digital Society*, **Eloísa Pérez Conchillo** from the University of Granada, addressed, for example, the question of whether the space provided to users by social networks should be considered as public space, particularly in the context of the need to protect certain democratic values such as freedom of speech in the online environment. **Miguel Arjona Sánchez** from the same university then presented a paper on digital currencies (*Digital Currencies: Challenges and Opportunities for Public Tasks*); **Giula Re Ferrè** from the University of Milan addressed the issue of digitisation in healthcare, comparing the situation in Germany and Italy (*The Digitisation of Healthcare in Italy and Germany: A Case Study*).

The *Young Scholars Workshop* was followed by thematic blocks in which SIPE members presented their contributions which then served as a basis for a summary discussions at the end of each section. The first section was devoted to defence and international security issues. For example, **Jaap de Zwaan** from the Erasmus University of Rotterdam presented a paper called *Armed Conflict in Ukraine and Refugees: A European or a National Issue?*, in which he dealt with, among other things, the issue of the institution of temporary protection of refugees, the introduction of which was inspired by the refugee influx during the war in former Yugoslavia. However, it was only in the context of the Russian invasion of Ukraine that this institution was activated for the first time. In connection with that con-

tribution, the congress participants then discussed, for example, the issue of EU enlargement to include Ukraine, which would obviously have to be linked to a change in the decision-making processes in the EU institutions. More generally, there was a discussion on whether the EU should seek other forms of cooperation with non-member states outside the framework of standard membership. The next person to speak was **Paulina Joanna Starski** from the University of Freiburg, who presented a paper titled *Cyber-Security in Times of War: A New Public Task*, in which she focused on the issue of cyber-security from the perspective of constitutional law. She dealt with a question whether ensuring cybersecurity should be considered a positive obligation of the state, as well as issues of the application of the principle of proportionality in interventions of public authorities in the interest of cybersecurity. The first block also included a presentation by **Herbert Küpper** from the Andrassy University of Budapest, who discussed possibilities of ensuring military security in a shared European space in the face of Russia's aggressive policy (*Im Schatten Russlands: Ein 'gemeinsamer Raum der militärischen Sicherheit' im Mehrebenensystem des europäischen Verfassungsverbunds?*).

The second block was concentrated on new challenges related to healthcare. First, **Luca Mezzetti** from the University of Bologna presented a paper called *Globalisation of Health Care Policies. Is Health Care in Its Multilevel Dimension (Global, European and National) a New Constitutional Problem?* He pointed out, among other things, that supranational and national structures are not sufficiently prepared for some of current health challenges; in the light of the recent COVID-19 pandemic, he argued that in Europe, for example, neither the EU legal system nor the legal systems of the Member States (especially their constitutional systems and crisis legislation) were prepared to respond adequately to a crisis of this type. **Maria João Estorninho** from the home University of Lisbon picked up the threads in the contribution called *The Role of the WHO in the Pandemic Crisis. Globalisation, Harmonisation and Flexibilisation of Administrative Law?* She accentuated that the COVID-19 pandemic became a global problem as a result of globalisation, (in particular the transport interconnectedness of the world, but also the movement of goods, etc.), to which responses must also be sought at a global level. She mentioned that a new Pandemic Treaty is being discussed at the WHO level, but that negotiations had not yet been successfully concluded. In relation to the national level, he addressed the issue of whether certain administrative procedures (in procedural law) should be simplified (deformalized) at the time of pandemic, e.g. shortening some legal deadlines or introducing an informal way of making decisions.

The third block was focused on response of legal systems to climate change. The first speaker was **Ekatérin N. Iliadou** from the National and Kapodistrian University of Athens with a paper called *Climate Change as the New Form of the "Environmental Question" in Modern Constitutionalism. Is there a Fundamental Right to Avoidance or Minimisation of Climate Change at Global, European and National Levels?* She focused on possible approaches and responses of constitutional systems to climate change. This was followed by a presentation by **Rui Guerra da Fonseca**, a judge of the Portuguese Constitutional Court and an academic from the home University of Lisbon, called *Constitutional Justice and Climate Change: The Decision of the German Constitutional Court of 24 March 2021 and the challenges put before the ECtHR*. He first analysed a case heard by the German Constitutional Court, which ruled that the German Federal Climate Change Act was unconstitutional on grounds of insufficient implementation of constitutionally enshrined commitments with respect to the climate; however, it should be noted that the decision was based on special provisions on the protection of the climate contained in the Basic Law for the Federal Republic of Germany (*Grundgesetz für die Bundesrepublik Deutschland*). He also addressed a current climate case before the ECtHR; in this case, the ECtHR will have to answer the question of whether a positive obligation of states to fight climate change can be derived from other fundamental rights (such as the right to life) which are of a general nature.

The fourth block was then focused on the transition from a fossil economy to a green economy. The first speaker was **Class-Friedrich Germelman** from the Leibniz University of Hannover with a paper on the issues of energy security in the light of the energy transition (*Fossil vs. nachhaltige Energieträger - eine Frage von globaler Tragweite. Über den Stellenwert der Energieversorgung im eu-*

ropäischen und internationalen Verfassungsverbund). Next, **Stefan Storr** from the University of Graz presented a paper which tried to answer the question of whether the energy crisis caused by the war in Ukraine will be a catalyst for a deeper energy transition to a green economy (*Der Krieg in der Ukraine und die Energiekrise in Europa: Katalysatoren einer neuen gemeinsamen Energiepolitik?*).

Last but not least, it is important to mention one of the highlights of the whole three-day event, namely the speech by **Marcelo Rebelo de Sousa**, the Portuguese President, who, in a way, visited his peers. Since the beginning of his professional life, he has been ingeniously moving between different career paths, which are, however, close to each other in a way; he has been involved in journalism, politics and the academy, specifically constitutional and administrative law, in which he has even attained a professorship. As an academic he can present himself – in the Portuguese context – with several important publications, e.g. a textbook on the general part of administrative law. As a politician he then became the president of the Partido Social Democrata (the name of the political party is somewhat misleading, as it is a centre-right party, affiliated, at the European level, to the European People's Party Group); he was then elected the President of the Republic in 2016 and 2021 direct elections, with the support of said party. In his speech, he stressed the importance of institutions, including regional and global ones, which, according to him, are key to collective solutions to regional or global problems. Due to the complexity of the current interconnected global civilisation, the present time – brings a lot of challenges to which it is necessary to seek common solutions.

The Congress has undoubtedly demonstrated that there is a number of important issues and challenges which public law needs to address carefully today, not only at the national level but internationally. In their presentations, the speakers showed that the current topics and challenges of public law usually concern a global area, which is why it is necessary to have a professional discussion at the international level. The regular congresses organised by SIPE provide an appropriate forum for this purpose. It is a pity that the latest international congress did not result in any proceedings of the papers presented. In conclusion, we consider it appropriate to mention that the congress had a very pleasant and friendly atmosphere and that the professional discussions were not only formal but also informal, such as during the joint dinner or an excursion to Lisbon City Museum.

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