ISSN 1574-0196

European Constitutional Law Review

2013 VOLUME 9 ISSUE 2

Contributions by

Urška Šadl, Violeta Ruiz Almendral, Patricia Popelier & Catherine Van De Heyning, Cesare Pinelli, Luigi Lacchè, Carri Ginter, Filippo Fontanelli, Paul Craig

Subjects

EUROPEAN UNION: post-national governance and the democratic deficit; also the use of its institutions outside the EU legal framework; SPAIN and its legal framework for combating the crisis; an analysis of how the COURT OF JUSTICE OF THE EUROPEAN UNION constructs its legal arguments; PROCEDURAL RATIONALITY used to analyse proportionality; 'GRANTED CONSTITUTIONS' in Europe after the French Revolution; THE COURT OF JUSTICE OF THE EUROPEAN UNION rules on the relationship between national and European constitutional law in fundamental rights protection; THE SUPREME COURT OF ESTONIA issues its own ruling on the European Stability Mechanism Treaty

le Manzehen worden Brilde

EuConst 2013/2

https://doi.org/10.1017/S1574019612001186 Published online by Cambridge University Press

ASSER PRESS

CAMBRIDGE

JOURNALS

Legal Theory

Editors

Matthew D. Adler, University of Pennsylvania Law School, USA Larry Alexander, University of San Diego Law School, USA David O. Brink, University of California, San Diego, USA Scott J. Shapiro, Yale Law School, USA

Legal Theory draws contributions not only from academic law, but from a wide range of related disciplines in the humanities and social sciences, including philosophy, political science, economics, history and sociology. Topics covered fall mainly into the broad categories of analytical and normative jurisprudence, doctrinal theory, policy analyses of legal doctrines and critical theories of law.

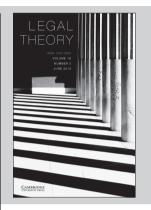
Price information

is available at: http://journals.cambridge.org/leg

Free email alerts

Keep up-to-date with new material – sign up at http://journals.cambridge.org/alerts

For free online content visit: http://journals.cambridge.org/leg



Legal Theory is available online at: http://journals.cambridge.org/leg

To subscribe contact Customer Services

in Cambridge: Phone +44 (0)1223 326070 Fax +44 (0)1223 325150 Email journals@cambridge.org

in New York: Phone +1 (845) 353 7500 Fax +1 (845) 353 4141 Email subscriptions_newyork@cambridge.org



EUROPEAN CONSTITUTIONAL LAW REVIEW

www.asserpress.nl/cata/euconst/fra.htm journals.cambridge.org/EuConst Recommended citation: EuConst

The journal is edited in the HOGENDORPCENTRE for European Constitutional Studies, a Jean Monnet Centre of excellence. This Centre is based in the University of Amsterdam. Published three times a year.

Indexed in the following Thomson Reuters products and services: Social Sciences Citation Index; Social Scisearch; Current Contents/Social and Behavioral Sciences; Journal Citation Reports/ Social Sciences Edition. Furthermore in the Index to Foreign Legal Publications, International Bibliography of the Social Sciences, Westlaw UK Legal Journals Index.

Editorial Office

European Constitutional Law Review c/o HOGENDORPCENTRE, University of Amsterdam, Department of Public Law, P.O. Box 1030; NL – 1000 BA Amsterdam. Tel. +31 205253310/3966. E-mail: EuConst@uva.nl.

Distribution

The *European Constitutional Law Review* is distributed for T·M·C·ASSER PRESS by Cambridge University Press, Cambridge, UK. The journal is also available online through the Cambridge Journals Online service. This service can be found at http://journals.cambridge.org/ EuConst>.

Subscription rates and specimen copies

Subscription to the *European Constitutional Law Review*, Volume 9 (2013): Print + online: GBP 150.00 / USD 272.00 / EUR 215.00. Print only: GBP 137.00 / USD 246.00 / EUR 195.00; Online only: GBP 127.00 / USD 229.00 / EUR 174.00. Subscription orders, changes of address and requests for specimen copies should be sent to: Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, UK, E-mail: journals@cambridge.org; or in the USA, Canada and Mexico: Cambridge University Press, Journals Fulfillment Department, 100 Brook Hill Drive, West Nyack, New York 10994 2133, E-mail: subscriptions_newyork@cambridge.org.

Advertising

To advertise in the journal please contact the relevant Advertising Promoter for your area: in the USA, Canada or Mexico: journals_advertising@cup.org; in the UK, Europe or rest of the world: ad_sales@cambridge.org.

Photocopying and permissions

All rights reserved. No part of this publication may be reproduced in any form or by any means, photocopying, electronic, or otherwise, without permission in writing from Cambridge University Press. Permission inquiries from the USA, Mexico, and Canada should be addressed to the New York office of Cambridge University Press http://www.cambridge.org/uk/information/rights/contacts/newyork.htm; permission inquiries from elsewhere should be addressed to the Cambridge office http://www.cambridge.org/uk/information/ rights/contacts/cambridge.htm; permission inquiries from Australia and New Zealand should be addressed to the Melbourne office http://www.cambridge.org/uk/information/ contacts_melbourne.htm. Permission to copy (for users in the USA) is available from the Copyright Clearance Center (CCC), http://www.copyright.com, email: info@copyright. com. For republication specific written permission should be obtained from the copyright owner. Please apply to press@asser.nl.

ISSN 1574-0196

© 2013 T·M·C·Asser PRESS, The Hague, and contributors.

BOARD OF EDITORS

W.T. Eijsbouts, editor-in-chief Professor of European constitutional law and history, University of Amsterdam and professor of European law, Leiden University

Jan-Herman Reestman, associate editor-in-chief Associate professor of public law, University of Amsterdam

Leonard F.M. Besselink Professor of European constitutional law, University of Amsterdam

Monica Claes Professor of European and comparative constitutional law, University of Maastricht

John W. Sap

Professor of European Union law, Open University in the Netherlands, Heerlen, and associate professor of European Union law, VU University Amsterdam

Jeremy B. Bierbach, managing editor Ph.D. candidate, University of Amsterdam

David Nederlof, associate managing editor Ph.D. candidate, University of Amsterdam Junior editors

Thomas Beukers European University Institute, Florence

Lars Hoffmann University of Maastricht

Jan Komárek London School of Economics

Thomas A.J.A. Vandamme University of Amsterdam

Gerhard van der Schyff University of Tilburg

Geerten Boogaard Leiden University

Laurens Westendorp, student editor University of Amsterdam

Special language adviser Russell E.M. Lawson Oxford

BOARD OF ADVISORS

Andreas Auer Professor of public law, University of Zurich

Paul Craig Professor of English law, St. John's College, Oxford

Gráinne de Búrca Professor of law, Harvard Law School

Bruno de Witte Professor of European Union law, European University Institute, Florence; Professor of European Union law, University of Maastricht

Olivier Duhamel University Professor at IEP (Sciences Po), Paris

Spyridon Flogaitis Professor of administrative law, University of Athens

Jörg Gerkrath Professor of European law, University of Luxembourg

P.J.G. Kapteyn Former judge in the ECJ

Tim Koopmans

Former judge in the ECJ and Advocate General at the Hoge Raad (Supreme Court of the Netherlands), The Hague

Rick Lawson Kirchheiner Chair, Department of Public Law, Leiden University

Koen Lenaerts Judge in the ECJ and professor of European law, University of Leuven

Ingolf Pernice Professor of public law and of international and European law, Humboldt University, Berlin *Jit Peters* Professor emeritus of public law, University of Amsterdam

Lucas Prakke Professor emeritus of comparative constitutional law, University of Amsterdam

Sacha Prechal

Judge at the ECJ and Professor of international and European institutional law, University of Utrecht

W.H. Roobol Professor emeritus of European history, University of Amsterdam

Dominique Rousseau Professor of public law, University of Montpellier 1

András Sajó Judge of the European Court of Human Rights

Mirosław Wyrzykowski Professor of constitutional law at Warsaw University, Poland and judge in the Trybunał Konstytucyjny (Polish Constitutional Court)

Peter G. Xuereb Professor of European and comparative law, University of Malta

Jiří Zemánek Jean Monnet Professor of European Union Law, Charles University, Prague

EUROPEAN CONSTITUTIONAL LAW REVIEW

2013 VOLUME 9 ISSUE 2

Contents

Editorial After *Åkerberg Fransson* and *Melloni* 169

Articles

Cesare PINELLI – The Discourses on Post-National Governance and the Democratic Deficit Absent an EU Government 177

Violeta RUIZ ALMENDRAL – The Spanish Legal Framework for Curbing the Public Debt and the Deficit 189

Urška ŠADL – Case – Case-Law – Law: *Ruiz Zambrano* as an Illustration of How the Court of Justice of the European Union Constructs Its Legal Arguments 205

Patricia POPELIER & Catherine VAN DE HEYNING – Procedural Rationality: Giving Teeth to the Proportionality Analysis 230

Paul CRAIG – *Pringle* and Use of EU Institutions outside the EU Legal Framework: Foundations, Procedure and Substance 263

Luigi LACCHÈ – Granted Constitutions. The Theory of *octroi* and Constitutional Experiments in Europe in the Aftermath of the French Revolution 285

Case Notes

Filippo FONTANELLI – *Hic Sunt Nationes*: The Elusive Limits of the EU Charter and the German Constitutional Watchdog – Court of Justice of the European Union, Judgment of 26 February 2013, Case C-617/10, *Åklagaren v. Hans Åkerberg Fransson* 315

Carri GINTER – Constitutionality of the European Stability Mechanism in Estonia: Applying Proportionality to Sovereignty 335

Editorial Policy $\dot{\mathcal{C}}$ Guidelines for Contributors

In the tradition of the HOGENDORPCENTE, the *European Constitutional Law Review* (EuConst) follows the classical approach of constitutionalism, to discuss EU law's developments as well as comparative public law of the member states, political and constitutional theory and history. The journal is a platform for scholarly discussion of European constitutional events and evolution. It is open to contributions in this field from any country in the world and from any discipline. These contributions should satisfy as to substance, apart from the common scholarly criteria, two specific conditions, to a) have a distinctly European relevance and b) include a reference to and discussion of legal aspects involved.

Submission of Material

Authors are requested to send their manuscript to the Editorial Office European Constitutional Law Review, c/o HOGENDORPCentre, P.O. Box 1030; NL – 1000 BA Amsterdam, E-mail: EuConst@uva.nl. All submitted materials should be in English. Detailed instructions and style sheet can be found on <http://journals.cambridge.org/action/displayJournal?jid=ECL>. Materials may be submitted at any time of the year and, if accepted for publication, will be published at the earliest available opportunity.

Copyright

Copyright is exclusively vested in EuConst and the author(s) jointly. Acceptance of the Board of Editors' offer to publish implies, however, that authors agree to an embargo on publication elsewhere, either in English or another language, for a period of two years following the date of publication in EuConst. The agreement of the Board of Editors will be necessary before the article can be subsequently published elsewhere.

Revision

Articles accepted will be edited, linguistically and substantively, subject to author's approval.

Books for Review

These should be sent to Bastian Michel, University of Amsterdam, Constitutional and Administrative Law Department, P.O. Box 1030, NL-1000 BA Amsterdam, e-mail: B.Michel@uva.nl.



The G.K. VAN HOGENDORPCENTE FOR EUROPEAN CONSTITUTIONAL STUDIES, short: HOGEN-DORPCENTE, is a Jean Monnet centre of excellence at the University of Amsterdam. Founded in 1996, it promotes research and course development in the field of European Constitutional Studies, bringing together the disciplines of constitutional (including comparative) law, history, political theory. Gijsbert Karel van Hogendorp, 1762-1834, is the *auctor intellectualis* of the Dutch Kingdom's first constitution, of 1814.

Apart from editing the *European Constitutional Law Review*, the HOGENDORPCentre hosts or co-hosts yearly conferences and runs a series of publications, the Hogendorp-papers, published by Europa Law Publishing http://www.europalawpublishing.com/european_law/erad.htm.