ISSN 1574-0196

# European Constitutional Law Review

2010 VOLUME 6 ISSUE I

Contributions by Sara Poli, Carlo Panara, Arjen W.H. Meij, Susanna Mancini, Bogdan Iancu, Chloé Charpy, Xabier Arzoz

# Subjects

THE EUROPEAN COURT OF HUMAN RIGHTS and the Italian crucifix controversy; Romania: Judicial reform and lustration; Germany: The role of *Länder* in international and EU decision-making; Unity of Caselaw in the context of globalisation; Minority Language Rights; France: Conseil d'Etat abandons *Cohn Bendit*; the European Court of Justice and the Data Retention Directive; Book Reviews

Menzehen worden

EuConst 2010/1



#### EUROPEAN CONSTITUTIONAL LAW REVIEW

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

The journal is edited in the HOGENDORPCENTER for European Constitutional Studies, a Jean Monnet Centre of excellence. This Centre is affiliated with the Europa Instituut and the Amsterdam Center of International Law (ACIL), University of Amsterdam and with the Faculties of Humanities and Political Sciences. Published three times a year.

The Journal acknowledges financial support from the Dutch Ministry of the Interior for editorial office and for language editing.

Indexed in the following Thomson Reuters products and services: Social Sciences Citation Index; Social Sciences; Current Contents/Social and Behavioral Sciences; Journal Citation Reports/Sciences Edition.

#### Editorial Office

European Constitutional Law Review c/o Hogendorpcentre, P.O. Box 1030; NL – 1000 BA Amsterdam. Tel. +31 20 5252957/2951. Fax +31 20 5252900. 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 <a href="http://journals.cambridge.org/ECL">http://journals.cambridge.org/ECL</a>.

# Subscription rates and specimen copies

Subscription to the European Constitutional Law Review, Volume 6 (2010): Print + online: GBP 119.00 / USD 214.00 / EUR 170.00. Print only: GBP 108.00 / USD 194.00 / EUR 154.00; Online only: GBP 103.00 / USD 185.00 / EUR 141.00; 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.

#### 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 or telephone +1 (212) 337 5053; in the UK, Europe or rest of the world: ad\_sales@cambridge.org or telephone +44 (1223) 325757.

# Photocopying

This journal is registered with the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, USA. Organizations in the USA who are also registered with the C.C.C. may therefore copy material (beyond the limits permitted by sections 107 and 108 of US Copyright law) subject to payment to the C.C.C. of the per copy fee of \$15.00. This consent does not extend to multiple copying for promotional or commercial purposes. Code 1574-0196/10. ISI Tear Sheet Service, 3501 Market Street, Philadelphia, PA 19104, USA, is authorized to supply single copies of separate articles for private use only. Organizations authorized by the Copyright Licensing Agency may also copy material subject to the usual conditions. For all other use, permission should be sought from the copyright owner. Please apply to the Editorial Office of the *European Constitutional Law Review* (see above).

#### ISSN 1574-0196

#### © 2010 T·M·C·Asser PRESS, The Hague, and contributors.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owners.

#### BOARD OF EDITORS

W.T. Eijsbouts, editor-in-chief

Professor of European constitutional law and history, University of Amsterdam

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 Utrecht

Monica Claes

Professor of European and comparative constitutional law, University of Tilburg

John W. Sap

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 University of Utrecht

Lars Hoffmann University of Tilburg

Thomas A.J.A. Vandamme University of Amsterdam

Gerhard van der Schyff University of Tilburg

Special advisers

Joost de Reede, special adviser Former associate professor of public law, University of Amsterdam

Russell E.M. Lawson, special language adviser 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 European law, NYU, Columbia

Bruno de Witte

Professor of European Union law, European University Institute, Florence

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 of public law, University of Amsterdam

Lucas Prakke

Professor emeritus of comparative constitutional law, University of Amsterdam

Sacha Prechal

Professor of international and European institutional law, University of Utrecht

Hjalte Rasmussen

Professor of European Union law, University of Copenhagen

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

#### 2010 VOLUME 6 ISSUE I

#### Contents

#### Editorial

From Confederacy to Convoy: Thoughts about the finality of the Union and its member states 1

#### Articles

Susanna Mancini – The Crucifix Rage: Supranational Constitutionalism: Bumps Against the Counter-Majoritarian Difficulty 6

Bogdan IANCU – Post-Accession Constitutionalism With a Human Face: Judicial Reform and Lustration in Romania 28

Carlo Panara – In the Name of Cooperation: The External Relations of the German *Länder* and Their Participation in the EU Decision-Making 59

Arjen W.H. Meij – Circles of Coherence: On Unity of Case-Law in the Context of Globalisation 84

Xabier Arzoz – Accommodating Linguistic Difference: Five Normative Models of Language Rights 102

# Case Notes

Chloé Charpy – France. The *Conseil d'Etat* Abandons Its *Cohn Bendit* Case-Law; *Conseil d'Etat*, 30 October 2009, *Mme Perreux* 123

Sara Poli – European Court of Justice. The Legal Basis of Internal Market Measures With a Security Dimension. Comment on Case C-301/06 of 10 February 2009, *Ireland* v. *Parliament/Council* 137

# Book reviews

Aileen Kavanagh – Constitutional Review Under the UK Human Rights Act (Gerhard van der Schyff) 158

Mitchel DE S.-O.-L'E. LASSER – Judicial Transformations: The Rights Revolution in the Courts of Europe (Elaine Mak) 163