European Constitutional Law Review

2009 VOLUME 5 ISSUE 2

Contributions by

Peter Van Elsuwege / Stanislas Adam, Steve Peers, Mathias Möschel, Bruno de Witte, Erika de Wet, Giacomo Delledonne / Giuseppe Martinico, Thomas Cottier, Samantha Besson

Subjects

European Court of Justice on Union citizens and their third-country family members; France: the ban on ethnic and racial statistics; Italy: regional *Statuti*; European courts and international law; Belgian Constitutional Court on reverse discrimination in a federal state

EuCons t 2009/2



Mangenan warden

CAMBRIDGE

New and Forthcoming Titles from Cambridge

The Constitution of a Federal Commonwealth

The Making and Meaning of the **Australian Constitution**

Nicholas Aroney

\$115.00: Hb: 978-0-521-88864-6: 446 pp. \$49.99: Pb: 978-0-521-71689-5



Social and Environmental Policies in EC Procurement Law New Directives and New Directions Sue Arrowsmith and Peter Kunzlik \$198.00: Hb: 978-0-521-88150-0: 550 pp.

LAW IN CONTEXT

Third Edition!

A Critical Introduction to European Law

Ian Ward

\$45.00: Pb: 978-0-521-71158-6: 316 pp.

Second Edition!

European Labour Law

Brian Bercusson

\$80.00: Pb: 978-0-521-61350-7: 764 pp.

The European Union and Crisis Management **Policy and Legal Aspects**

Steven Blockmans

\$140.00; Hb; 978-9-067-04286-4; 458 pp.

The Effects of EU Citizenship

Economic, Social and Political Rights in a Time of Constitutional Change

Flora Goudappel

\$96.00: Hb: 978-9-067-04278-9: 250 pp.

Constitutional Review under the **UK Human Rights Act**

Aileen Kavanagh \$125.00: Hb: 978-0-521-76100-0: 470 pp. \$60.00: Pb: 978-0-521-68219-0



THE COMMON CORE OF EUROPEAN PRIVATE LAW

Precontractual Liability in **European Private Law**

John Cartwright and Martijn Hesselink

\$153.00: Hb: 978-0-521-51601-3: 536 pp.



Security Rights in Movable Property in **European Private Law**

Eva-Maria Kieninger Assisted by Michele Graziadei, George L. Gretton, Cornelius G. van der Merwe and Matthias E. Storme

\$75.00; Pb: 978-0-521-10414-2; 828 pp.

The European Arrest Warrant in Practice

Nico Keijzer and Elies Van Sliedregt \$130.00: Hb: 978-9-067-04293-2: 464 pp.

Essential Questions in EU Law

August Reinisch

\$80.00: Hb: 978-0-521-51394-4: 268 pp.

\$29.99: Pb: 978-0-521-73028-0

State and Market in **European Union Law**

The Public and Private Spheres of the Internal Market before the EU Courts

Wolf Sauter and Harm Schepel

Cambridge Studies in European Law and Policy \$110.00: Hb: 978-0-521-85775-8: 270 pp. \$48.00: Pb: 978-0-521-67447-8



Legal Foundations of Tribunals in **Nineteenth-Century England**

Chantal Stebbings

Cambridge Studies in English Legal History \$48.00: Pb: 978-0-521-10751-8: 380 pp.

Prices subject to change.

www.cambridge.org/us/law



425 YEARS OF CAMBRIDGE PRINTING AND PUBLISHING

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 http://journals.cambridge.org/ECL.

Subscription rates and specimen copies

Subscription to the European Constitutional Law Review, Volume 5 (2009): Print + online: GBP 99.00 / USD 178.00 / EUR 142.00. Print only: GBP 90.00 / USD 162.00 / EUR 128.00; Online only: GBP 82.00 / USD 148.00 / EUR 118.00; Subscription orders and requests for specimen copies should be sent to Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 2RU, 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 1574-0196/09. 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

© 2009 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 Union law, University of Amsterdam, Jean Monnet Chair in European

constitutional law and history

Jan-Herman Reestman, associate editor-in-chief Lecturer in public law at the 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

Joost de Reede, special advisor

Former associate professor of public law, University of Amsterdam

John W. Sap

Associate professor of European Union law, VU University Amsterdam

Gustaaf van Nifterik, associate editor Lecturer in legal history, University of Amsterdam

Elies van Sliedregt, associate editor Professor of criminal law, VU University Amsterdam

Jeremy B. Bierbach, assistant editor
Ph.D. candidate at the University of Amsterdam

Russell E.M. Lawson, special language adviser

BOARD OF ADVISORS

Andreas Auer

Professor of constitutional law, University of Geneva

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

2009 VOLUME 5 ISSUE 2

CONTENTS

Editorial

Internet Piracy and the European Political and Legal Orders 169

Articles

Steve Peers – Free Movement, Immigration Control and Constitutional Conflict 173

Mathias Möschel – *Race judicata*: The Ban on the Use of Ethnic and Racial Statistics in France 197

Giacomo Delledonne & Giuseppe Martinico – Handle with Care! The Regional Charters and Italian Constitutionalism's 'Grey Zone' 218

Samantha Besson – European Legal Pluralism after Kadi 237

Bruno de Witte –International Law as a Tool for the European Union 265

Erika DE WET – The Role of European Courts in the Development of a Hierarchy of Norms within International Law: Evidence of Constitutionalisation? 284

Thomas Cottier – International Trade Law: The Impact of Justiciability and Separations of Powers in EC Law 307

Case Note

Peter Van Elsuwege & Stanislas Adam – Belgium. Constitutional Court. The Limits of Constitutional Dialogue for the Prevention of Reverse Discrimination. Judgment 11/2009 of 21 January 2009 327