Shaking off Constitutional Constraints

Maximilian Steinbeis

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Dear Friends of Verfassungsblog,

all eyes have been on the UK Supreme Court this week as the "case of the century" in British constitutional law about Parliament's right to have a say in exiting the European Union came to an end. While most commentators praised the result as a powerful reinforcement of Parliamentary sovereignty, MARK DAWSON begged to differ: "Something of a damp squib" was how the Berlin-based EU lawyer of Scottish descent described his impression of the judgment. The right of Parliament to be consulted had already been conceded by Government anyway. What made the case exciting was the opportunity to insert some additional legal constraints into the British constitution – constraints direly needed as the Tory majority appears determined to shake off as much of its European and international legal ties as it can get away with. Instead, the Court refused to help the devolved Scottish, Welsh and Northern Irish assemblies make their voices heard.

Dawson's provocative argument is likely to meet with objection, and GAVIN PHILLIPSON has already announced to write a rebuttal on these pages. TOBIAS LOCK points to a possible silver lining of the *Miller* judgment for the Scottish-led cause of Bremain: Politically, Scottish nationalists will now be able to raise their voice with increased passion as, legally, the Court has declared the rules of competence distribution between Westminster and the devolved parliaments unjusticeable. For German readers, ROMAN KAISER gives an overview of what the ruling is about and what it implies. THOMAS VOLAND takes a detailed look at the various possibilities of shaping the future trade relations between the EU and post-Brexit UK.

Italy, Russia, Turkey, Romania

The UK Supreme Court has not been the only body of jurisdiction issuing verdicts of fundamental relevance for the European constitutional space this week: The Italian Constitutional Court has handed down a decision on the electoral law and a referral to the European Court of Justice about what to do when EU law is in conflict with fundamental constitutional values of Italy – both decisions will be analysed here shortly.

The Russian Constitutional Court, in its turn, has for the first time made use of Russia's new self-proclaimed competence to disobey the Strasbourg Court of Human Rights. MAXIM TIMOFEYEV explains the background of that case – a fascinating and chilling insight in the workings of constitutional jurisdiction under the thumb of Putin.

Turkey is even more blunt in pushing towards authoritarianism as Russia. A fundamental constitutional reform is underway, analysed in a three-part series of blog posts by SILVIA VON STEINSDORFF and her team. The first part, by MARIA HAIMERL, is about the clipping of the wings of the Turkish Constitutional Court, the second, by FELIX PETERSEN and ZEYNEP YANASMAYAN, about the drastically reduced checks and balances in Turkey's system of balance of powers. The third, by Silvia von Steinsdorff, will be published over the weekend.

More sad news come from Romania which seems to be next in line as EU member state falling into constitutional disarray, with a blatantly corrupt party returning to power and their opponent, President Klaus Johannis, facing impeachment. The last year has been particularly difficult for LGBT people whose legal situation was challenged repeatedly in a constitutional referendum campaign and a CJEU referral by the Romanian Constitutional Court, as CONSTANTIN COJOCARIU reports.

Elsewhere

- For those looking for more cutting-edge thinking about the seminal *Miller* judgment by the UK Supreme Court about Brexit and the central role of the Westminster parliament has to play in it, as opposed to the devolved Scottish, Welsh and Northern Irish assemblies, the UK Constitutional Law Blog has a number of very noteworthy posts on offer, and so do STEVE PEERS, MARK ELLIOT, KENNETH ARMSTRONG, the UK Human Rights Blog, the UCL Constitution Unit Blog and the LSE Brexit Blog. If you have time for only one piece to read it should be JEFF KING's about what lies ahead for the Parliament now. And if you prefer to have the whole complicated story explained to you in neat yellow post-it notes, you should check out JOELLE GROGAN and GEORGIA PIERCE's splendid endeavour.
- SEBASTIAN PIECHA tries to wrap his head around the NPD judgment by the German Constitutional Court and its implication that a democracy has to stomach despicable parties unless they become a real threat,
- THERESA TSCHENKER criticizes a decision by the German Federal Court that condominium owners association can stop a disabled flat owner from having an elevator installed, property rights trumping anti-discrimination,
- EVA BREMS criticises the ECtHR for trivializing land mines in Turkey,
- ROSALIND ENGLISH reports on an algorithm that claims to be able to predict the outcome of ECtHR cases with an accuracy of 79 percent,
- according to ROSELINE LETTERON, the racial profiling debate has reached France (in French),
- TOM GINSBURG and AZIZ HUQ summarize their recent research on constitutional retrogression, the contemporary form of democratic backsliding we have experienced in Venezuela, Hungary, Poland and possibly now in the US, as opposed to the old-school brutal coup d'état authoritarianism of the olden days.

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