Walking out on us

Maximilian Steinbeis

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Dear friends of Verfassungsblog,

There has been a lot of walking out going on this week: German far-right leader Alice Weidel walked out of various talkshows and interviews, Hungary walked out of the circle of the EU member states who submit to the jurisdiction of the CJEU as a matter of course, and Catalonia walked out of its attachment to the Spanish constitution. Walking out on someone, whether its tearful, screaming-and-door-banging variety or the dignified, measured-pace-and-a-thin-smile kind, is a gesture of great communicative power. You occupy the position of the expellee while forcing the other to take on the role of the expeller. You cede the other a victory you obliterate by the very same act of leaving. You act, so to speak, in a passive voice. You actively disrupt the conversation, the other agape in fury and bewilderment, and yet it is you who suffers, is forced into flight, harried, violated. A powerful instrument indeed, as anyone married can testify.

The power of this gesture seems to me a major reason why the CJEU ruling on refugee quota has caused so much media attention this week. The applicants Hungary and Slovakia were legally obliged to accept refugees before as much as after; the CJEU saw no reason to annul this duty and neither did pretty much anybody else. Politically, the refugee relocation scheme is as dead in the water as before, and about to expire anyway. It was mainly the display of passive aggression by the Hungarian government throughout the process that made the whole thing a spectacle. "Rape" was the term chosen by the Hungarian Foreign Minister to express his outrage after the judgment. Bang, goes the door.

Who walks out must eventually come back, as Herbert Wehner once famously said. For the time being, Hungary will keep fulfilling its obligations under EU law, as interpreted by the CJEU, or else it will face an ultimately costly treaty infringement procedure as it already does in the case of refugee quotas. It is cold and uncomfortable outside, and no-one wants to share the fate of the British already freezing their butts off for everyone to see. The walked-out-upon party just needs to keep her cool and wait. Who walks out must come back. And if not: divorce.

Identity Issues

Passive aggression, like all aggression, is a means of asserting oneself: nothing like a fight, a hard line between oneself and the other to reestablish your fuzzy sense of identity and give it shape and firmness. How closely Hungary's resistance against refugee quotas is intertwined with the national identity policy of the FIDESZ government is analyzed by ANITA ROZÁLIA NAGY-NÁDASDI and BARBARA KÖHALMI.

MICHAL OVÁDEK takes a more lawyerly perspective on the ECJ decision and examines how the court handles the powers of the EU to manage refugee crises in its interpretation of Article 78(3) TFEU.

FIDESZ and like-minded parties around the world usually tend to have issues with the rule of law and with human rights, but seldom with democracy: They claim to like democracy a lot – they allege to represent the will of the people, after all. Why precisely this idea of a uniform national will is undemocratic and constitutionally corrosive is illuminated by MATTIAS KUMM in a highly recommended analysis.

The Catalan government and parliament have declared their determination to ignore the rulings of the Spanish Constitutional Tribunal regarding independence – an event that should ring a whole number of alarm bells all over Europe, according to DANIEL SARMIENTO.

Elsewhere

More on the CJEU refugee quota judgment: STEVE PEERS calls the verdict a pyrrhic victory, bringing the

tension between legitimacy and effectiveness into sharp relief. HENRI LABAYLE praises the judgment as appropriate and balanced, including the robust response of the Court to Poland's argument that Member States should be able to defend their 'ethnic homogeneity'.

The already mentioned DANIEL SARMIENTO has written another vehemently recommended post where he worries about the restraint with which the EU interprets its powers under Article 7 of the TEU against "rogue states" such as Poland and Hungary, in contrast to its unforgiving stance towards the UK in the interpretation of Article 50 TEU in the Brexit case: The latter norm was meant to give member states who fall out with the majority about matters of principle an exit option – a valve that might block when it is needed.

MIGUEL ANGEL PRESNO LINERA examines whether the unconstitutional independence referendum in Catalonia on October 1st is a case for the national security laws: rather not, he finds.

CARLOS ARTURO VILLAGRÁN SANDOVAL disentangles the threads of the current constitutional crisis in Guatemala.

ELISA ARCIONI and HELEN IRVING tell the story of seven members of parliament in Australia who found out that they had, without their knowledge, acquired dual citizenship by birth and are thereby, under Australian constitutional law, instantly ineligible.

So much for this week. All best, and take care,
Max Steinbeis

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