

Cleaning up after 2016

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Maximilian Steinbeis Do 22 Dez 2016

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Dear Friends of Verfassungsblog,

the end of this year of 2016 draws close, and relief about that fact, ill-founded as it may be, is palpable wherever I go. It has been a rough ride for constitutionalists, and we all deserve some days of rest and peace, if we can afford it. Therefore, I will spare you with seasonal reviews and reflections on these almost consistently dreadful twelve months past and highlight only one fact hopefully suitable to lift your spirits a bit: Since Brexit, support for European integration has jumped by 5 percent throughout the EU and by 7 percent in the UK, according to a [study by Bertelsmann Foundation](#).

One of the major stories here on Verfassungsblog throughout the year was the constitutional fracas in Poland. TOMASZ KONCEWICZ has time and again kept us abreast in painstaking analyses of the back and forth in the battle over the Constitutional Tribunal. The battle is lost. Do read Tomek's [comprehensive account](#), it is really worth it. And should you believe that this brand of constitutional capture in the name of national identity is a phenomenon typical only for the post-communist countries of Central and Eastern Europe, you may want to pay heed to BALÁZS MAJTÉNYI's [warnings from Hungary](#).

Meanwhile, the EU Commission has come to the conclusion that the headstrong Polish government deserves another two months time to overcome their reluctance to adhere to the rule of law. Now, as they have won the fight already and the Constitutional Tribunal is firmly under their control, I wouldn't [rule out that the PiS actually will formally concede](#) to the recommendations of the Commission, thereby making Brussels look like spine- and hapless fools all over again. Anyway, we will see how that goes, and I am very much looking forward to another piece by KIM SCHEPPELE and LAURENT PECH who will deliver a poignant analysis of the EU policy towards Poland by the beginning of January.

Speaking of the EU Commission and its President Jean-Claude Juncker: remember the time when we all talked about the Spitzenkandidaten process and the political mandate of the Commission? Now, the Grand Coalition that backed Juncker's claim has broken apart – and yet, as JAN WILLEM VAN ROSSEM notes, [nobody asks if the Commission's survival is now at stake](#). The Bundesverfassungsgericht, after all the flak it had taken for its decision on the 3 percent threshold in 2012, might experience a sweet little pang of satisfaction there.

Referenda and Refugees

The first of the many fateful referenda shaking the fundamentals of the EU this year was the one on the Ukraine association agreement in the Netherlands. The Council hopes to have found a way to accommodate the Dutch concerns, and PETER VAN ELSUWEGE finds the [results quite reasonable](#). The latest of those referenda was in Italy, and ORESTE POLLICINO and MARCO BASSINI point to the fact that the Italian Constitutional Court will soon decide on one of the most crucial matters [of controversy in the referendum debate, the electoral law](#).

And then there is, of course, Brexit: the Scots do not want to leave the EU, or at least the single market, along with the English, but at least for now independence is not on the table either – so what is to do? The latest model discussed is the one once found for the arctic Norwegian archipelago of [Svalborg, also known als Spitsbergen](#), and whether or not that makes any sense for Scotland is examined by NIKOS SKOUTARIS. With respect to the fight about Art. 50, some have suggested that post-Brexit UK would remain in the EEA single market unless it pushes an EEA-specific exit button. TOBIAS LOCK has looked into these suggestions but is [not convinced that they hold much water after all](#).

Refugee and asylum law has been a constant source of constitutional jurisdiction throughout the year, and the last days are no exception: On Thursday, there was the *Khlaifia* Grand Chamber decision by the ECtHR regarding the ban on collective expulsion of Lampedusa refugees from Tunisia, and according to JOHANNA

GÜNTHER the Strasbourg Court has [missed an important opportunity to strengthen](#) the rights enshrined in the Convention. CHRISTOPH TOMETTEN analyzes the level of protection for persecuted [homosexual and transgender people fleeing](#) to Germany and finds it insufficient. PAULINE ENDRES DE OLIVEIRA discusses the background of a little-noted but potentially hugely important Bundesverfassungsgericht decision this week about the [refugee status of Syrians in Germany](#) and their recourse to court procedure (the last two in German).

Another decision from Karlsruhe, concerning Blockupy protesters kettled by the police in Frankfurt, is harshly criticized by MAX PICHL and CARA RÖHNER for its alleged [weakening of the Bundesverfassungsgericht's own established freedom of assembly standards](#). JAKOB LOHMANN and DAVID WERDEMANN take a swipe at the south-western state of Baden-Württemberg for introducing [tuition fees for non-EU university students](#) disregarding their right to equality, and PAULINE WELLER finds much fault with recent attempts to ban [Muslim headscarfs from the bench in the court room](#) (all in German).

Yesterday's seminal decision by the European Court of Justice on mass data retention is on our screen, too, of course. I hope to be able to publish NIKOLAUS MARSCH's comments on the judgment by Friday.

Elsewhere

- STEVE PEERS interprets the [opinion of GA Sharpston in the Singapore Trade Agreement](#) case as an indicator of the EU's future trade policy,
- LORNA WOODS delves into the CJEU [data retention decision](#), and so does [ANGELA PATRICK](#).
- SUNE KLINGE's story about the [Danish Supreme Court challenging the Mangold jurisdiction](#) by the CJEU adds a chapter to the long and winding story of what German constitutional lawyers like to call *Verfassungsgerichtsverbund*,
- SELIN ESEN asks if the Turkish Constitutional Court, after its dismissal of complaints against emergency decrees, is [out for self-destruction](#),
- LOURDES PERONI finds the [ECtHR's Paposhvili decision on the expulsion of seriously ill migrants](#) "possibly one of the most important judgments of 2016",
- ILYA SOMIN tries to wrap his head around the fact that the British Charity Commission didn't recognize the [Jedi order as a religious organization](#).

And now, dear Friends of Verfassungsblog, let us drop these matters for a few days and celebrate Christmas or Hanukkah or whatever we like to celebrate at this season. I hope to see all of you sound and safe back here on Verfassungsblog in a hopefully happier 2017!

All best, and take care,

Max Steinbeis

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