

Freedom of Assembly in Poland: Next in Line?

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Maximilian Steinbeis Sa 10 Dez 2016

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Dear Friends of Verfassungsblog,

Public protest seems to be the best hope civil society now has in Poland against its increasingly authoritarian government. The efficacy of the "[black protests](#)" by hundreds of thousands of black-clad women and men who took to the streets in all major cities in October to rally against a radical piece of anti-abortion legislation had put a visible dent in the power-holders' image of steely un-compromising resolve. The Constitutional Tribunal may be lost, the opposition in shatters, but at least the citizens themselves can make their voices heard against the pretense of a populist party to already know what the people wants!

It would be only consequent that the the next obstacle to their power for the Law and Justice party to dismantle would be the right to freedom of assembly. Both chambers of the Polish Parliament have adopted a new law that many of the opponents of the ruling PiS party interpret as a step in that direction: It leaves the freedom to hold demonstrations formally intact but it allows the government, whenever it prefers a demonstration not to happen, to hold one of their own in its place.

The law allows the authorities to give priority to demonstrations held by the state, the churches and religious organizations on a given time or place, as well as "recurrent" demonstrations which take place on a regular basis at certain dates. Rumor has it, my sources in Warsaw tell me, that the main reason behind this law is to keep anti-PiS demonstrators from picketing the manifestations on the 10th of each month in front of the Presidential Palace in Warsaw to commemorate the victims of the plane crash of Smolensk, the dark founding myth of the new Poland envisioned by PiS. Another case of application might be the nationalist marches on November 11th, the Polish Independence Day: The law would make sure that on this day, the big squares and streets in central Warsaw will be firmly in the hand of the Nationalists, with no dissenting liberals to disturb the image of red and white unity.

This law is blatantly unconstitutional, as the Supreme Court has pointed out in a [blistering statement](#), and incompatible with Poland's international human rights obligations, as the [OSCE and CoE human rights commissioners have enjoined](#). Adam Bodnar, the indefatigable Human Rights Ombudsman and possibly the last remaining functional institution of constitutional control (and, in his former life as an academic, a frequent contributor to these pages) has also [notified the Parliament of his legal reservations](#). But the PiS government apparently cannot be bothered, and given the ruinous state of affairs over at the Constitutional Tribunal it has little reason to.

Europe, Italy, Nuclear Energy

In Germany, the top constitutional topic this week was the verdict by the Constitutional Court on the right to property of the owners of shut-down nuclear plants. From the rich bouquet of constitutional brain-twisters this case has to offer [I have picked a particularly fragrant flower](#) which is the question whether a state-owned corporation like Vattenfall can be entitled to human rights at all – a question answered in the affirmative by the Constitutional Court, thereby betraying a surprising pragmatism for a court usually much given to extensive theorising (in German).

In Italy, with the *bicameralismo perfetto* referendum failed, constitutional change is not going to take place any time soon, and this, by itself, could trigger constitutional change on a huge scale – in Europe. CHRISTIAN JOERGES has [shared some thoughts](#) about the particular role of German-Italian relations in this and the unsolved Eurozone conundrum that fuels many Italians' anti-establishment resentments. DANIELAUGENSTEIN takes on the facile blame game played by member state governments against Europe and, at the same time, calls on the EU to move beyond integration through law and reinforce its efforts to give the "[homeless ghost](#)" of

[EU law a home in a democratic European polity](#). One element of relief in the current crisis of the EU, with a view to the CETA/TTIP battles, could be to [stay clear of mixed free trade agreements](#), recommends THOMAS VERELLEN.

Another unsolved crisis in Europe is the refugee question, and LORENZ BODE takes a look into a specifically German contribution to the precarious legal status of undocumented refugees – the fact that, in order to be allowed to claim asylum, they first have to [break the German residence act](#).

Elsewhere

- FREDERIK FERREAU offers an in-depth analysis of the "[state-owned corporations as right-holders](#)" [question](#) raised by the nuclear plant case before the German Constitutional Court (in German),
- KONRAD LACHMAYER gives an overview of the mind-boggling chain of events in the run-up to the latest [Presidential Elections in Austria](#), and JAN RYBAK argues that the [far-right's defeat is no reason to relax](#),
- former UK Lord Speaker Baroness FRANCES D'SOUZA picks up [MEG RUSSEL's](#) demand to contain [the number of peers](#) to keep the House of Lords from growing out of proportion,
- MANUEL MÜLLER finds much to like about the plan to offer [British citizens a post-Brexit EU citizenship perspective](#) if they so wish (in German),
- ROBERT CRAIG's exhaustive report on the hearing before the UK Supreme Court on Art. 50 TEU and Brexit is [here](#), [here](#) and [here](#), and RACHEL JONES muses about the role of [legislative silence](#) in that context,
- STIJN SMETS observes a worrying trend at the ECtHR to condone the [silencing of whistle-blowing civil servants](#),
- THERESA RICHARZ and FRANZISKA BRACHTHÄUSER call for legislative action [against genital operations on intersexual children](#) (in German),
- ROSELINE LETTERON strikes alarm about the latest [weakening of judicial independence in France](#) by the outgoing Prime Minister Manuel Valls (in French),
- MIGUEL PRESNO LINERA in a veritable outburst of fury finds some rather drastic words about the alleged plagiarism by the rector of the King Juan Carlos University of Madrid at that venerable place of erudition's reaction or lack thereof ("[University of Shit](#)", in Spanish),
- JACK BALKIN lists [five techniques of undermining democracy he expects President Trump](#) to make use of, and a direct clamp-down on free speech is not one of them,
- DAVID BERNSTEIN asks progressives (i.e. the other guys) [to stop worshipping Franklin D. Roosevelt](#).

Next week, one interesting event will be a Grand Chamber decision by the European Court of Human Rights in the controversial [Khalifa case](#), concerning the push-back of refugees landed in Lampedusa to Tunisia without individual asylum procedures. Collective expulsion of aliens is forbidden under Art. 4 Prot. 4 of the Convention, and a chamber judgment in September 2015 had indeed found a violation of that right. On Thursday, we will know if that stands.

All best, and take care,

Max Steinbeis

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