Abstracts

El triple marco de protección de los derechos fundamentales en la Unión Europea

Ricardo Alonso García

The Charter of Fundamental Rights of the European Union, solemnly proclaimed in Nice on the 7th of December 2001 by the European Parliament, the Council and the Commission, the statute of which will be the object of debate on occasion of the Intergovernmental Conference anticipated for the year 2004, implies an effort for revealing rights that traditionally have been configured via the jurisprudence of the Justice Tribunal, being inspired on international instruments relative to human rights issues (especially in the European Convention for Human Rights) and in the common constitutional traditions of the Member States. For the moment, it has a persuasive judicial value for the purposes of continuing to configure the fundamental rights of the Union via the jurisprudence, joining, within the jurisdictional terrain of the Union, the global frameworks of protection dispensed by the European Convention of Human Rights and by the National Constitutions. Triple framework, thus, of protection, which requires the cooperation of their respective supreme interpreters (Justice Tribunal, European Tribunal of Human Rights and Constitutional or Supreme Tribunals of the Member States) in the multiple and dialectic constitutional context characteristic of the Law of the Union that is of a constitutional nature.

La distribución de competencias entre la Unión Europea y los Estados

Javier Barnes

Declaration 23 relative to the future of the Union, adopted by the Conference regarding the Treaty of Nice, states that, once opened the path to-

wards the expansion and the process for institutional reform, it is necessary to initiate a broader and deeper debate at all levels regarding the future of the Union, and which must tackle, amongst other questions, in particular, «the manner of establishing and supervising a more precise delimitation of the powers between the European Union and the Member States, that respects the principle of subsidiariness». (Article 5, part one).

The work is structured around two parts: a synthetic description of the triad of large principles that discipline the general architecture of the distribution of powers between the State and the European Community (8); and a reference to the academic and political-institutional debate regarding the reform of the system of powers. In short, the object of the work resides in, above all, extracting some issues for a subsequent reflection.

¿Qué diferencia hay entre un tratado y una constitución?

Luis María Díez-Picazo

In this work, what is attempted is to show what is the real extent of the current debate regarding whether the European Union needs a constitution. Concretely, it tries to focus on what would be the difference between having the fundamental rules of governance of the European Union covered in a series of treaties, or that these be outlined in a document formally classified as a constitution. For this it is necessary to examine the principle historical experiences of federalism (United States, Switzerland, Germany): it sketches a comparison between the approval, modification and denouncement of the treaties and of the federal constitutions. In short, the conclusion is that, ignoring symbolic questions, the difference between constitution and treaty is not of quality but rather of degree.

El espacio de libertad, seguridad y justicia en el Tratado de Niza

Fancisco Javier Donaire Villa

The Treaty of Nice amends some of the provisions concerning the area of freedom, security and justice as worded by the Treaty of Amsterdam. Unanimity changes into qualified majority voting (QMV) or co-decision (CD) for a few areas under Title IV of the Treaty establishing the European Community (TEC), while future unanimous Council decisions or measures will be required to introduce such changes for some others. QMV will be the rule for the Third Pillar agreements with other States or international organisations if the question should be decided so when acting only for the

inside of the European Union. The new provisions on enhanced co-operation will be applicable to Title VI of the Treaty on European Unión (TEU), but their exact scope for Title IV TEC will be less clear. Finally, the European Judicial Co-operation Unit (Eurojust), already envisaged in Tampere conclusions, is inserted into Title VI TEU.

La reforma de la arquitectura judicial europea: un templo del Grial falto de inspiración

Dámaso Ruiz-Jarabo

The determining factor of the reform has been the need of tackling the constant increase in the number of matters and of the essential time needed for resolving them, without taking into account other decisive factors, like the effectiveness of the jurisdictional protection of individuals.

The Treaty of Nice has effected a simplification and an arrangement of the rules that govern the community judicial organisation, using programmable precepts of principle, which must be developed gradually, without a pre-established term.

The pre-judicial jurisdiction anticipated for the Tribunal of First Instance entails series difficulties, given that same is conferred in a restricted, provisional and subordinated manner, which contradicts the constitutional nature of the function of watching over the uniform application of community law.

The creation of jurisdictional chambers for appeals to attend to specific issues at the first instance level, such as the public function, may improve the jurisdictional protection within the Union. The structure conceived implies a new design of competencies between the Tribunal of First Instance and the Justice Tribunal, with the introduction of a re-examination to allow the latter to control any judicial decision.

The possibility of restricting the issues that require the intervention of the advocate general can be criticised.

La Carta de los Derechos Fundamentales de la Unión Europea y los ordenamientos nacionales: ¿qué hay de nuevo?

Alejandro Saiz Arnaiz

The Charter of Fundamental Rights of the European Union does not have binding force. However, and as we wait to see what will be decided in the Intergovernmental Conference of the year 2004, the Charter, in its con-

dition of soft law, may produce, also within national ordinances, some type of effect. In this article, said possible effects will be analysed, in particular those which would result from the direct usage of the charter by the national tribunals (concretely by the Constitutional Tribunal) and, also, those provoked by the jurisprudence of the Justice Tribunal in the interpretation of the Charter, for being projected on the national interpreters and applicators of the Law of the Union. The conclusion that results from the proposed analysis is quite clear: in its current situation the Charter does not seem to add anything new.

La Constitución francesa de 4 de octubre de 1958 y la construcción comunitaria

Ghislaine Alberton

The article analyses the French constitutional rules that refer both to the elaboration of community law as well as to its application within the internal law, distinguishing in both cases, whichever applicable, the elaboration and application of the rules of original or derived community law. With regards to the elaboration of the community rules (I), the article dedicates special attention to the role played by the Constitutional Council –which it classifies as "the guarantor of national sovereignty"–, one of its functions being the prior control of the constitutionality of the treaties and, hence, of original law; subsequently, it questions the convenience of establishing some similar control mechanism over derived law. In that referring to the constitutional rules that regulate the application of community law (II), the article analyses the principle of the prevalence of the international treaties over internal law, and singularly the conditions which the Constitution itself applies to said prevalence as well as to its ambit of application.

La integración europea a la luz de la Constitución alemana: una reflexión en torno a la sentencia del Tribunal Constitucional Federal sobre el caso Maastricht

Armin von Bogdandy

The present article is centred on the discussion that the sentence of the so-called «Maastricht case» unleashed in the German jurisdictional doctrine. Since the sentence was issued by the 2nd Chamber, on the 12th of October 1993, European integration has taken subsequent steps, however the essence of the debate was already outlined in those works of the first half of

the nineties. The conceptualisation that the Federal Constitutional Tribunal effected of the European Union, of its implications for the mandate of the democracy deducible from the German constitutional text, and of the path for the democratic legitimisation of the process for the construction of Europe, constitutes the object of the study of this work.

Italia en Europa: problemas nuevos y viejos. A la luz del Tratado de Niza y de la reforma constitucional de las Regiones

Marta Cartabia

In the history of the participation of the Italian Republic within the European Communities, the adhesions of the successive Constitutive Treaties have not brought with it important uneasiness in the legislator or in the Constitutional Court of this country. The ratification of the Treaty of Nice does not stand out as an exception to this practice; thus it seems that it will not bring a constitutional revision of any kind in light of same. On this line, nothing leads us to believe that this new step in the path towards the European integration will modify in the slightest the pre-existing *statu quo* of the relations between European Community Law and internal Italian law. The Government and Parliament, essentially via the Annual Community Law, will continue to carry out the same role in the relations of Italy with Europe, and the judicial system with community sources within the Italian system will continue to be governed by the rules determined in the most recent jurisprudence of the Court. The only novelties that stem from the horizon are not associated to the Treaty of Nice, but rather to the reform of Title V of the Italian Constitution and have to do with the role of the Regions in the elaboration and execution of European Community Law.

Integración europea y Constituciones de los países candidatos

Luis López Guerra

The process of integration of the now candidate countries in the European Union will have deep consequences on their Constitutional law. This essay considers what may these consequences be in three different stages of integration. In a firts place, in the preparatory stage, in which the economic, political and legal basis needed before the formal integration must be built. Secondly, the study focuses on the need for constitutional provisions and/or reforms, which would allow the cession of sovereignty implied in the formal conclusion and ratification of the European Teaties. Finally, concerning the

stage posterior to the formal integration, those reforms are analysed which eventually will be needed to apply, in agreement with the principles of separation of powers and rule of law, the European legal provisions, whether originary or secondary.

La Constitución española antes y después de Niza

Pablo Pérez Tremps

The work has a dual object. On the one part, it effects an analysis of the «state of the question» relative to the consequences that the process of integration has had over the Spanish political-constitutional system. For this it analyses the constitutional coverage of the process itself, manifesting some deficiencies, in particularly regarding the third pillar. Likewise, it covers its incidence over the system of sources, over the organisation and the functioning of the powers of the State, and regarding territorial organisation. Secondly, it analysis the most important challenges that constitutionally are raised both by the Treaty of Nice itself, as well as by the new phase that said Treaty opens in the integration process, singularly in relation with the Intergovernmental Conference of the year 2004.

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