

# National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law

Anneli Albi · Samo Bardutzky  
Editors

# National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law

National Reports



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# Preface

We are delighted to bring to the readers what in our view is a truly fascinating book, *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law – National Reports*. The book contains twenty-nine in-depth national reports, which are available online in two volumes via Open Access. The book will be accompanied by a comparative monograph – referred to in this book as the ‘Comparative Study’ – as is explained in greater detail in the introductory chapter; the Comparative Study will be published later this year.

The national reports were prepared in the framework of the five-year research project ‘The Role and Future of National Constitutions in European and Global Governance’. The research project was funded through a 1.2 million EUR grant, awarded by the European Research Council (ERC) (Grant Agreement No. 284316; project acronym: ConstEurGlobGov), as part of the EU’s Seventh Framework Programme.

The reports are the result of extensive research by more than sixty contributors, whose posts and affiliations are listed at the beginning of each national report. The full, alphabetical list of all contributors is provided in the ‘Contributors’ section.

However, here we would like to make special mention of and gratefully acknowledge the central, pivotal contribution of the main constitutional law experts to the preparation and co-ordination of the twenty-nine national reports. The list of the main constitutional law experts for the countries covered in the research project is provided below.

We would also like to express particular gratitude to the considerable number of scholars specialising in the field of criminal law who kindly joined the project to share their expertise with regard to questions relating to the European Arrest Warrant. Equally, we would like to deeply thank all the other research collaborators for their extensive research and written contributions covering the range of themes addressed by the project.

The main constitutional law experts who were approached to carry out and co-ordinate the research for the project's national reports are as follows:

Austria:	Konrad Lachmayer
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Luxembourg:	Jörg Gerkrath
Malta:	Peter G. Xuereb
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Slovenia:	Samo Bardutzky
Spain:	Aida Torres Pérez
Sweden:	Joakim Nergelius
Switzerland:	Anne Peters
United Kingdom:	Alison L. Young and Patrick Birkinshaw

Once again, we are very grateful to the above constitutional law experts as well as to all the research collaborators for having generously given their time, expertise, attention and goodwill in carrying out extensive research for the project and for contributing constructively to the analysis of the new challenges posed to constitutional law by EU and transnational governance.

It must be noted that at the time of the book going to press, the overall constitutional and political climate has changed significantly since the start of the project in 2012, with widespread nationalist and illiberal developments in the interim in and beyond Europe. The timeline of the project is outlined in the introductory chapter, where it is explained that the present book does not address the more recent changes. Instead, the book explores the deeper comparative European constitutional culture and understanding of the rule of law, the common

and diverse elements in the comparative European constitutional landscape, and how these have been affected or changed by EU and global governance.

We hope that the national reports will make a significant contribution towards thinking and discussion about the future direction of travel for national, comparative, EU and global constitutionalism.

Canterbury, UK  
Ljubljana, Slovenia  
February 2019

Anneli Albi  
Samo Bardutzky

# Acknowledgements

The editors would like to express their deepest gratitude to the following colleagues and institutions whose contributions have made this comprehensive, two-volume book possible.

First of all, we are profoundly grateful to the national constitutional law experts and their research collaborators for having generously given their time, expertise, attention and goodwill in carrying out extensive research for the project and for contributing constructively to the analysis of the new challenges posed to constitutional law by EU and transnational governance.

For linguistic editing, we would like to express our infinite appreciation to Siiri Aulik for having edited this large-scale book of 1,500 pages with consistently wonderful enthusiasm, diligence, patience and care. Many of the authors of the country reports have joined us in thanking Siiri for her magnificent work.

We would also like to express our special gratitude to Colin Moore for having carried out the extensive editing of referencing throughout the book.

Our warm thanks also go to Cathy Norman, Sian Robertson, Sarah Slowe, Sarah Gilkes, Ruth Woodger, Jane Benstead, Jody Turner, Zoe Wood, Ben Obembe, Jon King and Jenny Rafferty from the University of Kent for their very efficient assistance with administrative and financial matters. We also greatly appreciated the assistance of Cathy Norman and Serena Natile in the process of organising a work-in-progress seminar at Kent in 2014 to discuss the draft papers.

We would also like to extend our thanks more broadly to Kent Law School for having provided a supportive environment in which to carry out this research. Indeed, many of the research questions have their origin in the workshops held over the years—and in discussions with colleagues—at the Centre for Critical International Law (CECIL) and Kent Centre for European and Comparative Law (KCECL), especially with regard to some of the more debatable impacts of the policies of global financial institutions on social justice and development (we would particularly like to acknowledge the work of current and former colleagues Toni Williams, Iain Ramsay, Paddy Ireland, Kate Bedford and Donatella Alessandrini). The critical and interdisciplinary research environment also opened up broader,

structural questions about the epistemology of research in EU and international law (with special thanks to current and former colleagues Harm Schepel, Simone Glanert, Bernard Ryan, Geoffrey Samuel and Wade Mansell). We would also like to thank Sally Sheldon, Dermot Walsh and Donal Casey for their contributions to the overall grant project.

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Last, but most importantly, we would like to acknowledge the very generous funding provided by the European Research Council as part of the EU's Seventh Framework Programme (Grant Agreement No. 284316). The grant made it possible to carry out this large-scale, extensive and systematic research on comparative constitutional law that otherwise quite possibly would never have been brought to life.



## **In Memoriam Kristīne Krūma**

It is with deep sadness that I am writing to inform readers that Dr. Kristīne Krūma, the constitutional law expert for Latvia for the present ERC funded research project ‘The Role of National Constitutions in European and Global Governance’, passed away on 4 July 2016 after a serious illness. Dr. Kristīne Krūma held the post of Associate Professor and Prorector of the Riga Graduate School of Law and was formerly a justice at the Constitutional Court of Latvia.

I have immensely appreciated Kristīne’s work both in her capacity as a constitutional court judge and as a scholar, and I remember her as a very kind and warm colleague. I have been particularly impressed by how Kristīne, on the one hand, was a strong champion of European and international law and cooperation and emphasised the need to redefine classic national concepts such as sovereignty. Yet on the other hand, especially in her role as the judge rapporteur in the IMF austerity cases at the Constitutional Court of Latvia, she also sought to ensure a fairer balance between the exigencies of tackling the economic crisis and the impact of drastic cuts on those affected, including pensioners, children, disabled persons and parents of newborn children.

Kristīne was an internationally esteemed scholar, frequent invited speaker at academic conferences and a valued member of numerous collaborative projects. The pre-eminent European constitutional law professor Leonard Besselink from the University of Amsterdam asked me to add the following note: ‘I will remember her gentle character, and acute sense and awareness of where rule of law, discrimination and fundamental rights could be involved where social or other policies seemed to ignore them’.

For the present book, Dr. Kristīne Krūma prepared a highly interesting national report ‘The Constitution of Latvia—A Bridge Between Traditions and Modernity’, in co-operation with Sandijs Statkus. In the Comparative Study that accompanies the book, it emerges that the Latvian Constitutional Court, along with its German and Portuguese counterparts, would appear to be the only courts in Europe to have taken a more proactive approach to finding a better balance and upholding fundamental rights and constitutional values in the context of the IMF and EU crisis measures and austerity programmes. In addition to its more well-known stance in

protecting the legitimate expectations of individuals in the context of the austerity measures, the Latvian Constitutional Court notably underlined that taking international loans is an important matter of state and public life which must be decided by the legislator on the basis of the principle of separation of powers and that, furthermore, the government cannot restrict fundamental rights by assuming international obligations. In so doing, the Court protected an important continental European constitutional tradition that dates back to the nineteenth century but which has increasingly come under strain in EU and global governance.

In my view, Kristīne has left a highly valuable legacy to the legal thinking on constitutional values and the rule of law-based state in the context of transnational governance.

Everyone who knew Kristīne will be deeply saddened by her death. Our sincere condolences go to Kristīne's husband, Ivars, and daughter, Zane. According to Kristīne's last will, her ashes were scattered into the Baltic Sea.

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# Abbreviations

ACTA	Anti-Counterfeiting Trade Agreement
AJIL	American Journal of International Law
Am. J. Comp. L.	American Journal of Comparative Law
AöR	Archiv des öffentlichen Rechts
CETA	Comprehensive Economic and Trade Agreement
Charter	Charter of Fundamental Rights of the European Union
CIA	Central Intelligence Agency
CJEU	Court of Justice of the European Union
CML Rev.	Common Market Law Review
Colum. J. Transnat'l L	Columbia Journal of Transnational Law
COSAC	Conference of Community and European Affairs Committees of Parliaments of the EU
CPT	European Committee for the Prevention of Torture
E.L.Rev.	European Law Review
EAW	European Arrest Warrant
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECB	European Central Bank
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECJ	European Court of Justice
ECLR	European Competition Law Review
ECSC Treaty	Treaty establishing the European Coal and Steel Community
ECtHR	European Court of Human Rights

EDC Treaty	Treaty instituting the European Defence Community
EEA	European Economic Area
EEC Treaty	Treaty establishing the European Economic Community
EEC	European Economic Community
EFSF	European Financial Stability Facility
EFTA	European Free Trade Area
EIB	European Investment Bank
EJIL	European Journal of International Law
EJSL	European Journal of Social Law
ELJ	European Law Journal
ELTE Law Journal	Eötvös Loránd University Law Journal
EMU	European Monetary Union
EPL	European Public Law
ESM Treaty	Treaty Establishing the European Stability Mechanism
ESM	European Stability Mechanism
EU	European Union
EuCLR	European Criminal Law Review
EuConst	European Constitutional Law Review
EuGRZ	Europäische Grundrechte-Zeitung
EUR	Euro
European Constitutional Treaty	Treaty establishing a Constitution for Europe
Fiscal Compact	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union
FRA	European Union Agency for Fundamental Rights
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
Harv. Law Rev.	Harvard Law Review
IASB	International Accounting Standards Board
ICANN	Internet Corporation for Assigned Names and Numbers
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICL Journal	The Vienna Journal of International Constitutional Law
ICLQ	International and Comparative Law Quarterly
ICON	International Journal of Constitutional Law
ILO	International Labour Organization
IMF	International Monetary Fund

IOSCO	International Organization of Securities Commissions
LJ	Lord Justice
LJIL	Leiden Journal of International Law
LQR	Law Quarterly Review
Maastricht Treaty	Treaty on European Union
MEP	Member of European Parliament
MJ	Maastricht Journal of European and Comparative Law
MLA	Mutual Legal Assistance
MLR	Modern Law Review
MoU	Memorandum of Understanding
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
NJB	Nederlands Juristenblad
NSA	United States National Security Agency
NTBR	Nederlands Tijdschrift voor Burgerlijk Recht
NTER	Nederlands Tijdschrift voor Europees Recht
NTM	Nederlands Tijdschrift voor de Mensenrechten
OECD	Organisation for Economic Cooperation and Development
OMT	Outright Monetary Transactions
PL	Public Law
RevIntlDroitComp	Revue internationale de droit comparé
SEA	Single European Act
SEK	Swedish krona
SIS	Schengen Information System
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union
TTIP	The Transatlantic Trade and Investment Partnership
UK	United Kingdom
UN	United Nations Organization
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States
USA	United States of America
USSR	Union of Soviet Socialist Republics
VAT	Value Added Tax
VCLT	Vienna Convention on the Law of Treaties

WB	World Bank
WP IDEIR	Working Papers on European Law and Regional Integration
WTO	World Trade Organization
Yale L.J.	Yale Law Journal
YEL	Yearbook of European Law
ZSE	Zeitschrift für Staats- und Europawissenschaften