Cheers, Dear Friends!

And bye-bye, Viktor Orbán

Maximilian Steinbeis

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"Viktor Orbán can no longer be voted out of office!" When the huge protests against right-wing authoritarianism took place in Germany last winter, I made myself a placard bearing that very sentence. Look at Hungary, people, was my message. Look at Hungary if you want to understand how authoritarian populism works and where it leads: to a regime that can no longer be removed from power through democratic means. To a constitutional and institutional order that has been optimised over 16 years, with every trick in the book and the greatest legal sophistication, towards a single goal – that within it, only one person can govern successfully, and that person is Viktor Orbán.

How faint-hearted of me. Viktor Orbán, as it turns out, can indeed be voted out. His authoritarian regime rested on the premise that his party, even in the event of electoral defeat, would retain the power to determine how successfully and for how long his successor could govern, hemmed in on all sides by cardinal laws that can only be amended by a two-thirds majority, and by Fidesz-dominated institutions – the President, the Attorney General, the Governor of the National Bank, the State Audit Office, the Constitutional Court – all capable of throwing a spanner in the works whenever Opposition Leader Orbán found it useful to do so, each appointed to endless terms of office and elected by a two-thirds majority. Thus, even in the event of an electoral defeat, nothing worse would befall him than having to let his successor rack up a year or two of failures, before finally, to everyone's relief, engineering fresh elections and returning to power in triumph, his democratic credentials unimpeachable. This premise holds so long as his successor does not in turn secure the very two-thirds majority to which Orbán owed his control over the institutions in the first place. Once it no longer holds, the entire edifice collapses. My faith in democratic providence had not been sufficient to foresee that. My bad. Anyone who wishes to raise a glass to that is most welcome – there is plenty of champagne to go round.

Look at Hungary! For a decade and a half, Verfassungsblog has essentially been preaching this very sentence in ever new variations. "A regime is taking shape here that, in the name of national unity, is using democracy, law, and the constitution to cement its own power." I wrote that on 22 January 2011. This Saturday marks exactly fifteen years to the day since Orbán's new constitution was proclaimed. Shortly before that, I travelled to Budapest and wrote a piece for the FAZ. I spoke with Hungarian constitutional scholars, many of whom went on to become regular contributors to our publication. Together with Christian Boulanger, I organised signatures for an open letter of protest that appeared in Die Zeit. With Alexandra Kemmerer and Christoph Möllers, I devised the format of the blog symposium and tested it in February 2012 on the "Rescue Package for EU Fundamental Rights" conceived by Armin von Bogdandy and his team – a safety net the EU was supposed to be able to deploy over its citizens in the event of a total constitutional breakdown in a member state, i.e. Hungary. Hungary shaped my perspective on PiS rule in Poland from 2015 to 2023, on Boris Johnson and Donald Trump, on a great deal of what has happened in the world and has been a subject on Verfassungsblog ever since. Hungary was a decisive driving force in the development of this project, away from the journalistic one-man online diary of the early years and towards the transnational legal-scholarly platform of discourse that Verfassungsblog is today.

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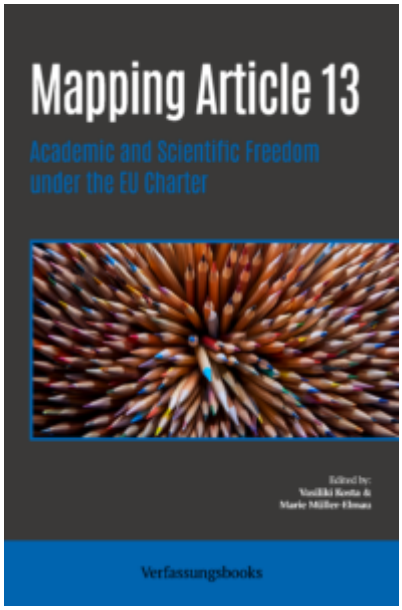

Mapping Article 13: Academic and Scientific Freedom under the EU Charter

Vasiliki Kosta & Marie Müller-Elmau (eds.)

Academic freedom is under pressure. Though protected by Article 13 of the EU Charter, academic freedom in the context of EU law received practically no or very little attention. As legal and political developments accelerate, the meaning of this right is taking shape in real time. This edited volume puts Article 13 of the EU Charter in the spotlight and reflects its potential in light of past and present threats to academic freedom.

Discover the potential of Article 13 EU Charter in protecting academic freedom here!

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And now that haunting is gone. That is the crucial point. Whether Péter Magyar's Tisza party will make better use of its two-thirds majority than Viktor Orbán's Fidesz made of its own may be hoped for but cannot be known. Far more important for the moment, however, is that the haunting is gone – along with the greasy, grinning gangster regime that performed it for sixteen years. The narrative that this regime had mastered the magic trick of having the democratic cake whilst devouring it in the most autocratic way, without anyone being able to do anything legally or politically effective about it – that narrative has been refuted. That is the crucial point.

And to that I raise my glass of champagne. Cheers, dear friends! The haunting is over – this particular haunting, at any rate. And yet: how much we learned from it and through it and about it. How many concepts were coined in its study. What is populism? That, right there, what they were doing in Hungary. Cheers, dear Jan-Werner Müller! The original Franken-state, the archetype of authoritarian legalism. Cheers, dear Kim Scheppele! Cheers to all you scholactivists and rule-of-law zealots and constitutional Cassandras in Budapest, Vienna, Berlin, Princeton, Warsaw, Florence, wherever you may be! It is with you that I wish to savour this moment.

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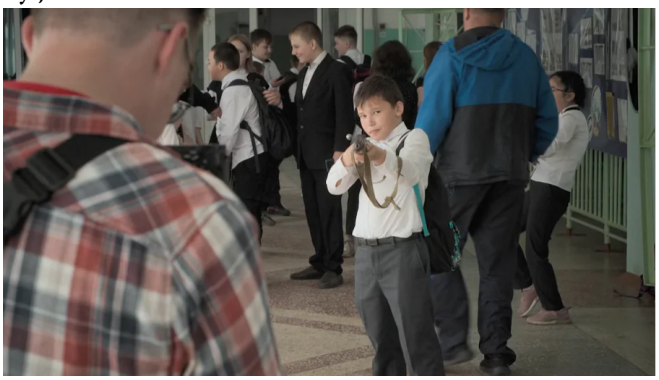
Editor's Pick

by JAKOB GAŠPERIN WISCHHOFF



The award-winning documentary *Mr. Nobody Against Putin* takes place deep in rural Russia, in Karabash, widely regarded as the most polluted city in the world. A local teacher, Pasha, who is also responsible for filming events at the school, loves his job and offers his pupils a safe space for discussion and creativity. When the war in Ukraine starts, propaganda enters every corner of education – the pupils learn to march, and many of their brothers are taken to the front. Many never return. Pasha follows his principles and quits his job. But then he realises that he is the man with the camera, a perfect position to capture the absurdity and wickedness of this war propaganda in schools.

As everything changes and Russia becomes too dangerous for Pasha, he must eventually leave his grey, industrial city, which he genuinely loves. He takes his recordings with him and turns them into this documentary – now forbidden in Russia as extremist and terrorist propaganda. The story touched me with its

simplicity and humanity. It shows the absurd extent of the indoctrination of the most vulnerable in society.

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The Week on Verfassungsblog

summarised by EVA MARIA BREDLER

It has actually happened. Orbán has been voted out! I really don't want to spoil the champagne mood, but I'm afraid I still have a job to do. So here is a brief interruption with the key developments (there are some good ones too, I promise!).

The TISZA Party, led by Péter Magyar, has secured a constitutional majority in **Hungary**. While the result allows the creation of a new constitution, TÍMEA DRINÓCZI (ENG) warns that without broad legitimacy, this would risk reproducing the patterns of the previous regime.

For BARBARA ZELLER (ENG), the electoral victory is overshadowed by a constitutional dilemma: is it justified to disobey the constitution to rebuild democracy and the rule of law? She calls for **constitutional disobedience**, arguing that it may not only be justified but legally required to uphold substantive values.

If Hungary does manage to rebuild democracy one day, it might also stop being the prime example of authoritarianism in Europe. But today is not that day. So GIUSEPPE MARTINICO and UMBERTO LATTANZI (ENG) use it to contrast the judicial reform in **Italy**, which the electorate has rejected, with Hungary. Their verdict: Italy might be a system in poor health, but it is far from the undemocratic Hungarian example.

Now, please do briefly set your glass aside: **Ecuador's Constitutional Court** is again under pressure from President Noboa's government. ANDREAS GUTMANN, DIEGO NÚÑEZ SANTAMARÍA and ALEX VALLE FRANCO (ENG) delineate a broader struggle over constitutional limits in a system where most control institutions are already aligned with the executive.

The outlook is similarly troubling in **Brazil**, where the Banco Master scandal exposed how opacity and conflicts of interest can erode judicial integrity at the Supreme Court. JULIANO ZAIDEN BENVINDO and MIGUEL GODOY(ENG) draw lessons from India, which faced a very similar institutional crisis in 2018.

Meanwhile, India has passed a new **Trans Rights Act**, in a rushed legislative process. SARTHAK GUPTA (ENG) warns that the law shifts recognition of gender identity toward state verification, with significant implications for constitutional rights.

While state verification goes too far, every day we do depend on and trust in professional advice: doctors, lawyers, engineers, and whatnot. In its **conversion therapy** ruling, the US Supreme Court now reframes professional advice as protected speech. CLAUDIA E. HAUPT and ROBERT POST (ENG) argue that this move risks dismantling the legal framework that ensures competent professional advice.

In Germany, too, democratic rights are being mobilised against queer rights: the Saxony State Directorate has denied the **CSD street festival** in Dresden its status as a public assembly. A misguided signal at the wrong time, argues JASPER SIEGERT (GER), showing why the decision fails to do justice to the nuances of assembly law.

And Merz's recent announcement is unlikely to do justice to the nuances of asylum law. He suggested that "around 80 per cent of Syrians currently living in Germany should return to their home country". Quite apart from whether the grounds for humanitarian protection have actually ceased to exist – or whether such a blanket revocation would even be lawful – SEBASTIAN KORSCH (GER) explains the various residence options still available to **Syrian asylum seekers** (you may cautiously pick up your glass again at this point – there are, in fact, quite a few.)

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Das Justiz-Projekt: Verwundbarkeit und Resilienz der dritten Gewalt

Friedrich Zillessen, Anna-Mira Brandau & Lennart Laude (Hrsg.)

Wie verwundbar ist die unabhängige und unparteiische Justiz? Welche Hebel haben autoritäre Populisten, Einfluss zu nehmen, Abhängigkeiten zu erzeugen, Schwachstellen auszunutzen? Wir haben untersucht, welche Szenarien denkbar sind – und was sie für die Justiz bedeuten könnten.

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Meanwhile, the European Committee of Social Rights found that Italy had violated the European Social Charter by defining "essential public services" too broadly in relation to the **right to strike**. ANGELO JR GOLIA (ENG) explains the Italian genesis of that right.

EU law may have sharper teeth than the European Social Charter, but not in the area of freedom, security and justice, where it leaves gaps to accommodate national orders. The intensifying fight against corruption at the EU level is now creating friction for the primacy of EU law. PHILIPPOS-GEORGIOS KOTSALIS and MARTIN HEGER (ENG) look at the broader picture and argue that in criminal law, **primacy of EU law** does not operate in the same way as in the internal market.

Another challenge for EU law is **generative AI** (such as ChatGPT or Grok). Generative AI does not neatly fit under the DSA, complicating the EU Commission's regulatory reach. MARCO BASSINI and ANDREA PALUMBO (ENG) explain why applying the DSA anyway would be a good idea.

I wish we could now confidently raise our glasses again, but not quite yet. At least there's birthday cake: the **German General Act on Equal Treatment** turns 20. But will it finally be brought into line with EU law? After years of debate, a reform proposal is now on the table. ALEXANDER TISCHBIREK (GER) offers a disappointed assessment: "One might have expected a larger cake for such a milestone birthday."

But now, finally – cheers!

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That's it for this week. Take care and all the best!

Yours,

the Verfassungsblog Team

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