# Being a Good Dictator is not so Easy

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That an investigative journalist gets into trouble with the police in Vladimir Putin's Russia of 2019 is not news. That the police plants drugs on people to frame them is not news either. But that the victim gets released, that the Minister of the Interior regretfully speaks of "lack of evidence" and initiates an internal investigation, that two high-ranking police officers get fired: *that* is news.

On Friday, at a workshop at the Humboldt University, I had the opportunity to meet the political scientist and Russia expert Silvia von Steinsdorff and talk to her about the curious case of Ivan Golunov. According to her, what is so interesting about that case is that it reveals a breaking point of authoritarian rule. It shows that even and especially in such a pervasive authoritarian system as the Russian, at some point a civic political public sphere emerges, where thousands take to the streets protesting, where three usually meek newspapers clear their front pages for blasts of solidarity, where even under conditions of seamless indoctrination and intimidation a significant part of the population will eventually say: enough already. We are used to stomach a lot, but this is too much. To dish up a story like this and expect us to swallow it adds insult to injury. We may be suppressed, but we are not stupid!

The authoritarian regime cannot control when this point is reached. It's not as if anyone believes or even is supposed to believe that the journalist arrested was really a drug dealer in the first place. No one does, and it's not even necessary that they do. It's enough for each person to expect that everyone else will accept the lie as a second reality and settle into it. Once this is generally expectable, you'll have no other option but to settle into it yourself, whereby the loop closes and the lie becomes reality – until at some point the expectable ceases to be expectable all of a sudden, and the whole construct falls apart.

This second reality, once it's established, will be exploited by others, too, for themselves and on their own account. Ivan Golunov apparently didn't have any beef with Putin himself, but with some corruption networks in Moscow. But it was Putin's policemen who planted the drugs on him on whoever's instructions. This poses a dilemma for Putin, as Mark Galeotti observes: either he allows that others use his means of power for their own interest – which makes him look weak. Or he doesn't and intervenes, sets the arrested person free, has his minister apologize, fires the guilty police officers – which makes him look weak as well.

Poor Putin, one is almost tempted to say, or to quote Silvia von Steinsdorff: "It is not so easy to be a good dictator." The Golunov case in itself may not be enough to put the regime under serious pressure. But these cases are multiplying. The authoritarian regime loses its authority drop by drop like a leaking tank loses petrol.

## Media inescapability

Turkey is not Russia, and Hungary is not Turkey, and yet all three regimes have in common that they are built on the expectability of acceptance of second realities. In Turkey, no one really has to believe with an honest heart that the municipal elections in Istanbul were indeed manipulated at the expense of Erdoğan's AKP. In Hungary no one really has to believe that George Soros really intends to replace Magyars with Africans. As long as we expect most others to accept this as reality, it will become reality.

This requires a certain degree of media inescapability, and how that is produced in Turkey and Hungary was discussed at the workshop at Humboldt University which I attended on Friday. Political scientist Gülçin Balamir Coşkun reported how Erdoğan's AKP government in Turkey gradually brought the four major media holdings under the control of government-

friendly companies and radically eliminated the remaining space of journalistic freedom through brutal repression. Gábor Polyák, professor of media law at the University of Pécs, said Hungary was lagging behind in that respect. But while there is no direct violence and coercion against journalists, they still basically have to choose between either doing the government's bidding or going out of business.

++++++*A Note from the University of Jena*++++++

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According to Polyák, the Hungarian experimental laboratory has produced and perfected a three-pillar model of illiberal media policy: The first pillar is the media supervisory authority, whose regulatory, sanctioning and subsidy options are put at the service of government interests. The second is the shaping of the market environment in the media sector to reward friendly reporting with advertisements by the state and by oligarchs profiting from state orders, and to make unfriendly reporting economically unattractive by means of the withdrawal of advertisements, tax audits and other stuff with bottom-line impact. Finally, the third is the massive use of state resources to directly manipulate public opinion by plastering the public space with billboards, obstructing parliamentary reporting etc.

Hungary, unlike Turkey, is a member of the European Union. What's so bitter about this, according to Polyák, is the fact that many of these awful policies could actually be dealt with under EU law – much easier than, for example, the suppression of the independent judiciary which, unlike media policy, is beyond the direct competence of the EU. It might be worthwhile to check, for example, whether it is in line with EU state aid law to use state advertising campaigns to promote or sanction the media in the way the Hungarian government does. Particularly since most of the government's money comes from the EU's structural funds in the first place. To lavish funding on an authoritarian regime but then look the other way when it comes to controlling its use – that is a recipe for disaster and a tremendous betrayal of those Hungarians who expect the EU to provide protection against illiberalism and authoritarianism instead of promoting it. "Without the EU", was Polyák's disillusioned conclusion, "the media situation in Hungary would be better".

## The Party, the Party is always right

Let's move on to **Poland**: Marcin Warchoł, the Deputy Minister of Justice, has announced that he intends to take seven jurists from the venerable Jagiellonian University in Krakow to court. What have they done wrong? They have published a legal opinion about a draft law of the Ministry of Justice which, in their view, could have unfavourable consequences in the fight against corruption. This, according to the Minister, is a "lie". The truth is that his draft law is excellent, and the assertion that it could have these problematic consequences is not true at all. Lies that undermine the "citizens' trust in the justice system" and thus the "basis for the rule of law and democratic and just conditions" cannot be tolerated by the state, because there are "limits to criticism and political debate that must not be overstepped".

I don't even know where to begin. A traditional little East German marching tune from 1949 comes to my mind which teaches us humility before the vanguard of the working class and goes like this (it rhymes in German in an actually rather pretty way):

The Party, the Party, it is always right,
and comrades, it stays that way.
He who fights for the law
is always right
against lies and exploitation!
He who insults life is stupid or bad.
He who defends mankind is always right.

So, out of Lenin's spirit, welded by Stalin,
The Party, the Party, the Party!

I have been in touch with Witold Zontek, one of the Krakow criminal lawyers who are threatened to be sued by Warchoł, and he explained to me what this is about. According to Zontek, the Ministry of Justice had whipped a bill through parliament in the by now usual breakneck procedural-rules-be-damned manner. That draft law was supposed to massively aggravate the already very sharp Polish criminal law in, among other things, the high-profile areas of corruption and pedophilia. The Krakow Institute of the Criminal Law Foundation (Krakowski Instytut Prawa Karnego Fundacja) has examined this law in two expert opinions and found a rather embarrassing incoherence: The chaotic and intransparent legislative process had led to a change in the draft that leads to bribery in certain cases no longer being punished as corruption in the public sector, but only as corruption in the private sector, which is firstly much harder to prove and secondly much less severely punished. This would affect the CEOs of companies with minority state shareholdings, e.g. the oil company PKN ORLEN.

I can see why this is a major pain for the PiS government. There it is, presenting itself as tough on crime and corruption, and suddenly it turns out that the opposite may happen, in a way that once again documents the PiS's reckless handling of its constitutional ties in the most embarrassing way.

But just you wait. We'll see about that, won't we? Whoever prepares such exposing legal analyses in Krakow is stupid or bad, that's the only explanation in Lenin's spirit, right? Well, I guess we're lucky that the PiS government has not yet made as much progress as it would have liked to have made with the sovietization of the judiciary, so far. So, let's wait and see how far the Deputy Minister of Justice will get with his lawsuit.

Fun fact 1: the aim of the lawsuit, according to the Ministry of Justice, is to "defend its reputation, the Polish justice system and the reputation of the Jagiellonian University itself". That's… rich. A government ministry claiming a) a right to defend its reputation based on, what? its right to privacy? its human dignity as a person?, and b) the right to defend a separate entity's reputation, namely the venerable Jagiellonian University of Krakow which, as far as is known, has never asked to be defended by any bloody cabinet member who might as well mind his own business, and certainly not by attacking freedom of research and thereby its own lifeblood, thank you very much…

Fun fact 2: Warchoł is the guy who represents the Republic of Poland in the Venice Commission of the Council of Europe. In other words, the body whose expertise is called upon when it comes to upholding constitutional, democratic and human rights standards in Europe. Picture that.

## Human dignity

Back to equally sovietization-prone **Hungary**: Last week the Hungarian Constitutional Court delivered a particularly appalling evidence of what the reign of Orbán is up to constitutionally: it is about whether the criminalisation of homelessness poses a problem for human dignity, which for the majority of Hungarian constitutional judges it does not, as human dignity is in their opinion the hallmark of good well-behaved citizens and not of people sleeping on park benches. NÓRA CHRONOWSKI and GÁBOR HALMAI comment, and VIKTOR KAZAI takes issue with the excruciatingly flimsy reasoning of the Constitutional Court.

As far as the media order in **Germany** is concerned, DIETER DÖRR calls for more regulation of the "opinion-making" power of the intermediaries: Against the dominance of Facebook and Google, the states are in his view obliged by the *Grundgesetz* to create a cross-media "secure diversity law".

Anyone who claims their human rights before the ECtHR, from **Turkey** or elsewhere, has to wait often years and sometimes even decades until finally a verdict is handed down at Strasbourg. This, according to TOLGA ŞIRIN, cannot stand.

## Elsewhere

FREDERIKE FRÜND examines to which extent the **Catalan** separatist leader and newly elected MEP Carles Puigdemont enjoys parliamentary immunity against Spanish criminal justice.

STEPHAN MÜLLER shows how Roma from the Western Balkans have been singled out for exclusion from legal migration to **Germany** since 2015.

MANUEL MÜLLER considers the *Spitzenkandidaten* procedure for the election of the **EU** Commission President already a success, measured against the goal of democratising the Union.

PIERRE DE VOS celebrates the ruling of the High Court of **Botswana** on the unconstitutionality of the criminalisation of homosexuals.

LEA RAIBLE believes that the Brexit vote in the **UK** should not be the end of referendums in general.

MICHAEL SPENCER analyses a ruling of the **British** Supreme Court on the capping of welfare and its discriminatory effect on single parents and their children.

SAM FOWLES believes that if the future **British** Prime Minister wants to push through a no-deal Brexit by means of prorogation of Parliament, the courts might well be able to intervene.

MARIUSZ JAŁOSZEWSKI reports encouraging developments regarding the disciplinary prosecution of critical prosecutors in **Poland**.

LUIS ARROYO JIMÉNEZ looks for reasons why the **Spanish** Constitutional Court, after nine years, has still not ruled on the reform of the abortion law.

BENJAMIN WITTES disagrees with **US** presidential candidate-for-candidate Kamala Harris who wants Trump behind bars after his term in office, and MICHAEL C. DORF recommends Hamilton as a role model and a pardon for Trump.

KHEMTONG TONSAKULRUNGRUANG and BJÖRN DRESSEL consider the Constitutional Court's cooperation with the military junta in **Thailand**.

PRIYA PILLAI sounds the alarm over the increasing criminalisation of refugee aid in **Europe** and the **USA**.

So much for this week. The summer break is gradually approaching, and in Berlin the summer holidays will start next week, which is why I am going to be away from my desk for most of the next two weeks. Verfassungsblog, however, will be open for business, as we expect, among other things, some exciting analysis of the tremendously exciting developments in **Hong Kong** and of the upcoming ECJ ruling on highway tolls in **Germany**.

On another note: many of you have recently renewed your crowdfunding support for Verfassungsblog for another year – many thanks for that! Our hybrid status as an independent enterprise on the one hand, and a cooperation project with academic organisations such as the WZB on the other, sometimes makes our model of funding somewhat complicated to explain. But if we want to avoid unhealthy dependencies we have to rely on our readers to contribute to our upkeep. That is why we thank all those who support us on Steady from the bottom of our hearts and kindly ask all those who don't (yet) to make up their minds or reconsider their decision. So: please click here.

All the best, and enjoy the summer,
Max Steinbeis

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