Stated by Parliament

Maximilian Steinbeis

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Measured by their performance, the climate protests of the "Last Generation" are already a success. There are arguments in the Federal Republic of Germany in all the places where arguments are needed: in road traffic about the harmlessness or reprehensibility of one's own modus of participation in it, in criminal law about violence, coercion, necessity, and self-defence, and between the CSU and the President of the *Bundesamt für Verfassungsschutz* about what the constitution must or must not be protected against. The atmosphere is getting tenser, the climate is getting hotter, smugly inhabiting one's moderate comfort zone is getting harder by the minute, and the opportunities to let it all be someone else's problem are getting scarcer and thus all the more fiercely contested. All because of those kids on the motorway. That's quite an achievement, you have to give them that.

The criticism of our author and former editor Tobias Gafus of the frivolous dissemination of the thesis that blocked motorists are enjoying a right to self-defense against climate protesters, including the right to violently rip their glued hands off the street no matter how much skin stays on the tarmac (see below), was, unsurprisingly, met with a lot of opposition. What I find interesting, speaking of performance, is that among the ad hoc reactions on social media, a considerable part of the uproar was triggered by the gender-neutral word he used for "motorist" (*Autofahrende*: as you may or may not know, German nouns are either masculine, feminine or neutral, and it's not at all a matter of course any more that motorists, male and female, can all be swept up in the masculine *Autofahrer*). The gender-neutral wording was apparently understood as a provocation, even before the content of the article had been taken note of: before you expose us to that sort of gender language you better shut up in the first place (e.g. here, here and here). I don't know about you, but it somehow surprises me every time anew with how vehemently so many people insist, when confronted with gender-sensitive language, how incredibly important it is to them that it is not at all important to them.

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Am Institut für Öffentliches Recht (Prof. Dr. Dr. h.c. Hans-Detlef Horn) der Philipps-Universität Marburg sind ***zwei Qualifizierungsstellen mit dem Ziel der Promotion*** *zu besetzen.*
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At the end of last week, the state parliament of Thuringia approved a motion by the CDU parliamentary group with the already somewhat contradictory title "Gendering? No thanks! Keep to the rules of the German language – no politically motivated alienation of the German language!" (it doesn't sound any less clunky in German either). The process was already remarkable for several reasons: firstly, the CDU is an opposition party in socialist-green-minority-governed Thuringia, which usually precludes any of their motions from being adopted, but secondly, the majority came about because the officially untouchable AfD chose to vote in favour of it, too. As is well known, two years ago the Thuringian CDU already consorted with the AfD for a few hours in the most fatal way in the prime ministerial election. Unlike then, this time the protest remained lukewarm at best, and the Thuringian CDU canted complacently that it's not their fault after all if other parties find their ideas convincing, too.

The third remarkable thing about the matter is the decision itself. To say what exactly it was about is not so easy. It is not legally binding, at any rate. It has no legal force; it does not entitle or oblige anyone to anything. Instead, it sets out with a statement. Six of

them, to be exact. Not statements of facts, though. It is a narrative that is stated. The story of "natural" language change, which, so to speak, occurs of its own accord and is adopted by the majority of the population all by itself, as opposed to "ideological" language change, which is "influenced by social currents" and brought about by a "political movement", and the existence of that natural language change is determined not by the people, i.e. society with all its currents, but "exclusively by the Council for German Orthography".

This narrative has now been turned into a statement on behalf of the Thuringian people, and on this basis the president of the state parliament is requested to refrain from any use of "grammatically incorrect gender language" in all internal and external communication, and to the state government to enforce this accordingly in all its offices, schools, courts, universities and in public broadcasting.

The state government, however, would be in a tough spot if it wanted to comply with this demand. It can't just tell independent judges, university professors enjoying academic freedom and broadcasters enjoying freedom of press how they should speak. This is one of several reasons why following the request is entirely out of question. Which means that the government now it has to defend itself against the accusation of not respecting the will of parliament.

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Brandenburgische Technische Universität Cottbus - Senftenberg

Wir suchen zur befristeten Anstellung ***eine/n Volljuristin/Volljuristen (m/w/d)*** *(Akademische*r Mitarbeiter*in / Qualifikationsstelle) ab dem 01.01.2023 am Zentrum für Rechts- und Verwaltungswissenschaften (ZfRV) der BTU Cottbus-Senftenberg zur Mitarbeit und Unterstützung in Lehre und Forschung im Bereich des Öffentlichen Rechts.*

Weitere Informationen erhalten Sie in der vollständigen Stellenausschreibung.

Bewerbungsschluss ist der 06.12.2022.

Ansprechpartnerin ist Frau Schade: gudrun.schade@b-tu.de.

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Parliament, on the other hand, would not be allowed to do what it is asking the state government, either. If a ban of "gender language" he had put it into law, that law would be manifestly unconstitutional. It hasn't, though, so the CDU-AfD majority that supports the resolution can both have the cake and keep it, too: Their narrative of natural v. unnatural language change is now the Thuringian official state doctrine without them or anyone else having to take any responsibility for its normative meaning and effect. It's all a matter of nature, not law. Quod erat demonstrandum. That is the performance. Which is, regardless of the content of this resolution and all the inconsistencies and weird stuff it is teeming with, a flawless exemplar of authoritarian populism. In this respect, the Thuringian CDU is absolutely right: the fact that the AfD also voted in favour does not change much. This is entirely on them.

The week on Verfassungsblog

… summarized by PAULINE SPATZ:

HEIKO SAUER provides a constitutional contextualization of the Berlin State Constitutional Court's decision in the **election review proceedings** and shows why he is not convinced by the ruling.

According to a special opinion of the ECtHR, German **information access law** can hardly be reconciled with the ECHR. DAVID WERDERMANN agrees with the special opinion and points out the need for reform in access to information law.

Germany has (finally) decided to ratify the **UN Social Covenant**. ANNALENA MAYR explains the background of the late ratification and what needs to change in order to implement the rights of the Social Covenant.

Those who want to observe the **COP27** as independent NGOs have been dealt a bad hand of cards, observes GRETA REEH and criticizes the lack of transparency at the climate summit.

The FDP wants to remove the limit on annual greenhouse gas emissions for the various sectors set in the **Climate Protection Act**. But this is unconstitutional, as PHILIPP SCHÖNBERGER shows.

In light of the first acquittal based on § 34 StGB in a climate protest case, JANA WOLF examines whether and when **climate activism** can be justified by necessity.

TOBIAS GAFUS analyzes the question whether car drivers are entitled to a **right of self-defense according to § 32 StGB against roadblocks** of climate activists and warns of prematurely accepting such a right.

Can (punishable) climate protest be labelled as **"eco-terrorism"**? That is not only wrong, but might even foster radicalization, says KATRIN HOEFFLER (best read with a soundtrack).

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CHRISTIAN TIETJE comments on Germany's **planned withdrawal from the Energy Charter Treaty** and puts the decision of the traffic light coalition in legal perspective. LUKAS SCHAUGG & AISHWARYA SURESH NAIR look at the proposed **reform of the treaty** and argue that a coordinated withdrawal would be preferable.

ROMY KLIMKE & JANNIS BERTLING explain the factual and legal situation of ***Rockhopper v. Italy*** and what the case means for future investor-state dispute settlement proceedings in climate and environmental law.

The Opinion of the Advocate General in the ECJ proceedings on the compensability of **non-material damages from GDPR infringements** has been published. MARCO BLOCHER considers the opinion to be unhelpful.

The **CJEU** has decided that national courts need to ascertain of their own motion whether the detention of an illegally staying asylum seeker is lawful. JASPER KROMMENDIJK & TIJN HENDRIKX discuss the Court's approach and the legal background.

PAUL ARNELL explains the legal background of the ECtHR decision in ***Sanchez-Sanchez v. UK*** on extradition under the threat of a life sentence without the possibility of parole, and why the Grand Chamber "fudged the issue".

CHRISTOPHER MCCRUDDEN shows why the post-Brexit **Rule of Law crisis in the UK** is an important part of a sustained challenge to the rule-based legal international order.

KIM LANE SCHEPPELE & JOHN MORIJN look at the two different negotiating processes determining the **EU funds Hungary** will receive and what will happen when the processes finally merge.

In the fourth part of their analysis, KIM LANE SCHEPPELE & GÁBOR MÉSZÁROS explain the finishing touches that the **Hungarian** government put on their anti-corruption framework before the European Commission evaluates it.

PÄIVI LEINO-SANDBERG explains why the European Commission's recent proposal for nature restoration has caused a heated constitutional debate in **Finland**.

ALEKSANDRA JOLKINA shares her first-hand account on **Latvia's** human rights violations of non-European asylum-seekers at the Latvia-Belarus border.

MARIJA BARTL argues that for societies to reclaim law as the core expression and vehicle of democratic government, **law must be taught differently** than in the past.

The right-wing extremist party that will be most likely part of **Israel's** new government coalition wants to change the judicial appointment process. RIVKA WEILL shows that these changes would destroy Israel's judicial independence.

Central Africa is host to the largest community of internally displaced persons. CRISTIANO D'ORSI

argues to adopt a specific binding legal instrument to ease the management of this humanitarian crisis.

That's all for now. All the best, and see you next week!

Max Steinbeis

ABOUT THE AUTHOR

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Maximilian Steinbeis is a legal journalist and writer and the founder and director of Verfassungsblog.

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