Verfassungsblog
ON MATTERS CONSTITUTIONAL

“Something might be coming”

Five Questions to Gerhard Reissner

Maximilian Steinbeis & Gerhard Reissner

17.01.2025 doi: 10.59704/8b5937655c92d761

For the first time in history, Austria’s President has tasked the authoritarian-populist Freedom Party of Austria (FPÖ) with forming a government. We wanted to know what this means for the integrity of the Austrian judiciary and spoke with Gerhard Reissner. Gerhard Reissner was a long-time Vice President of the Austrian Association of Judges and President of the European Judges’ Association CCJE.

1. The FPÖ, which is likely to provide Austria’s Federal Chancellor for the first time, is not known for accepting court rulings against it without objection. What will the Austrian judiciary be facing?

The FPÖ has very good media management. Just this week, they launched a new media platform. Whenever they dislike a ruling, whether it’s from criminal courts, family courts, or the Constitutional Court, they immediately declare: “This is not only wrong but a sign of political justice!” This, of course, has a devastating impact on public opinion. Interestingly, other political parties are unable to counter this. The only opposition comes from professional associations, which then issue press releases and give interviews. This pressure will intensify. After all, several legal proceedings are pending against prominent representatives of this party. The National Council has lifted the parliamentary immunity of FPÖ chairman and chancellor candidate Herbert Kickl. Additionally, the potential future coalition partner, the Austrian People’s Party (ÖVP), faces similar problems. There are various criminal investigations against ÖVP representatives and even the party itself, and this is why there is criticism there, too. The question is whether the ÖVP will impose limits on the FPÖ nonetheless. For me, this is a key question in what lies ahead.

2. In Poland, Hungary, and many other countries, we could observe the strategies used by authoritarian-populist governments to portray the judiciary as an adversary and to attempt to bring it under their control. How well is the Austrian judiciary protected against these strategies?

I believe there is still a high level of public awareness about the value of an independent judiciary. However, it remains uncertain how this might change after a successful intervention in the media landscape. The structural mechanisms safeguarding judicial independence need improvement. When open judicial positions are filled, the personnel committees of the respective courts rank the candidates. The Minister of Justice selects from these lists and proposes appointments to the Federal President. We’ve seen several instances where appointment authorities delay decisions or override the recommendations of these committees. They are not binding. So far, this has rarely caused issues. In recent years, a rule was introduced requiring any deviation from the personnel committee’s suggestions to be justified. However, if someone acts in bad faith and wants to install their own people, they can, of course, bypass these suggestions. The question is then how the public reacts.

There have also been instances where the Federal President has rejected an appointment proposal. In theory, he appoints all judges, but in practice, he only does so for presidents and judges of the highest courts, based on government recommendations. For other positions, he delegates his authority to the minister. He could, however, revoke this delegation.

++++++++++*Advertisement*+++++++++



*An der LMU München ist am Lehrstuhl für Öffentliches Recht, Europarecht und Rechtsphilosophie von Prof. Dr. Ulrich Haltern, LL.M. (Yale) ab dem nächstmöglichen Zeitpunkt eine Stelle als Wiss. Mitarbeiter*in (m/w/d) in Teilzeit (50 %) zu besetzen. Es besteht die Möglichkeit zur Promotion.*

Bewerbungsschluss ist der 31.01.2025.

Weitere Informationen finden Sie hier.

++++++++++++++++++++++++

3. To what extent could the federal states serve as a resilience factor?

Ordinary jurisdiction and federal administrative courts are federal matters. However, for the past ten years, that is fairly recent, state administrative courts have been deciding cases at the first instance. These courts face significant problems due to the influence of state governments on appointments. For the presidents of state administrative courts, there are no proposals from judicial bodies at all. It entirely depends on state governments who is elected.

Sanctioning and disciplining of inconvenient judges is, of course, also a potential vulnerability. In Austria, anyone can report an alleged disciplinary violation by a judge. However, the initiation of proceedings depends on the presidents of the four higher regional courts, who are the top administrative authorities within their jurisdiction but subordinate to the minister. Disciplinary courts are divisions of the higher regional courts, and their composition is determined by distribution plans and personnel committees. As such, this system is currently relatively secure. But it all could be altered by ordinary legislation, of course.

4. How far-reaching is constitutional protection in this context?

The Constitution enshrines the Supreme Court as the highest instance of civil and criminal jurisdiction, the independence and non-interference of judges in judicial matters, and the requirement to consult personnel committees for appointments. However, everything else is regulated by ordinary law. This includes court organization, which is always a popular means to intervene in the judiciary. While the Constitution outlines only basic principles, the legislator can change the rest.

The Constitutional Court is largely regulated by the Constitution itself. Regarding the appointment of Constitutional Court judges, some are appointed by the government, while others are selected by Parliament – split between the National Council and the Federal Council. It is clearly allocated who makes which appointments. For instance, in late December, a judge retired, and the government can fill this position. It's fortunate if a hearing is held, as this is not always the case. Appointments can influence decisions, but a single new judge out of fourteen will not significantly alter the overall picture.

5. How well-equipped is the judiciary itself to resist such pressures?

Professional associations are traditionally quite strong in Austria and maintain good media contacts. If they organise bigger protests, this has a noticeable impact. How far the government might disregard such opposition, however, is hard to predict.

One major target of the FPÖ in the judiciary is the Economic and Corruption Prosecutor's Office, which was deliberately designed to have a greater degree of independence compared to other prosecutor's offices. Plans for reform are now under discussion, citing the long duration of investigations, potentially redistributing its responsibilities to other prosecutors. The ÖVP also has issues with this office. Something might be coming. How much can be done to effectively fight it? I do not know.

*

Editor's Pick

by KLAAS MÜLLER

Source: https://www.instagram.com/p/DCbLq-dOo3KH/

Do you know Rainald Goetz´s Instagram Account? The writer, who became famous in the 90s for his pop literature, has been keeping a type of digital diary for a few months now and posts almost daily. Back in 1998, 11 years before the founding of the Verfassungsblog, he already ran a project ("Waste for everyone") that would probably be called a blog today, albeit a different genre than ours. Then as now, Goetz's focus is primarily the *Zeitgeist*: media, feuilleton, culture, politics – and the law.

What I find particularly fascinating is his take on the *performance* of the law, as it also emerges in the populist theater of the FPÖ that could soon come to Austria in new intensity after judgments of an independent judiciary (see above). At the same time, Goetz – always a big Luhmann fan – is interested in the *specific nature* of law; in how this rather peculiar sphere affects society and its systems (and vice versa). Here, his playful enthusiasm keeps reminding us why it is so fortunate to be able to engage with it as well.

"Ivory tower" at its best.

> *"The turmoil of society has worked its way into the institutions; this perhaps explains how much my theoretical interest has shifted to the work of lawyers [...]"– rainald.goetz, Instagram post from 16.11.2024*

*

The Week on Verfassungsblog

...summarized by EVA MARIA BREDLER

Please believe us when we say that we would rather not report about authoritarian takeovers everywhere. But, alas, they are everywhere. If you've read our interview with GERHARD REISSNER above, you know which challenges **Austria** is facing, and to which extent it is equipped to deal with them. KONRAD LACHMAYER (EN) adds how constitutional conventions and the political change in the *Bundesländer* contributed to the comeback of the FPÖ.

Meanwhile, **Hungary** is trying to take control of the last parts of the judiciary that were still independent: disciplinary proceedings. TAMAS MATUSIK (EN) sees Hungary on the verge of a full-scale judicial capture. He fears that judges' opposition against these planned structural reforms may have created a political opportunity to further silence dissenting voices.

Not only the independence of the Hungarian judiciary is being dismantled. Under Orbán's leadership, the illiberal government has started a culture war against academic institutions, while claiming that liberals are in fact the ones who are threatening **academic freedom**. GABOR HALMAI and ANDREW RYDER (EN) on "how the destroyers of academic freedom masquerade themselves as its victims".

Speaking of masquerade: **Marcin Romanowski**, former Polish Deputy Justice Minister and sitting Member of Parliament, was granted "political asylum" by Hungary, after an European Arrest Warrant was issued against him for irregularities regarding the management of the national Justice Fund. What kind of asylum is at play here? And what does it imply for the principle of mutual trust within the European Union? SZYMON KUCHARSKI (EN) provides answers.

Mutual trust is at stake in **Canada**, too: Justin Trudeau announced that he would resign as Prime Minister once a new Liberal leader was selected, proroguing Parliament until 24 March. But even these final official acts are mistrusted – a judicial review application was filed challenging the prorogation. VANESSA MACDONNELL (EN) on what we know about the legal challenge so far.

++++++++++*Advertisement*+++++++++

New Blog Symposium: Musk, Power, and the EU — Can EU Law Tackle the Challenges of Unchecked Plutocracy?

At a time when calls for the EU to respond to Musk's actions are multiplying, the question of whether, why, and how the EU may react remains largely undefined. What makes Musk's conduct problematic under EU law? Is it a matter of disinformation, electoral integrity, foreign influence, unprecedented market concentration, or possible abuse of power? Or is it all of the above, or a combination of these factors? Our new blog symposium, edited by Alberto Alemanno and Jacquelyn D. Veraldi, will

explore these questions through a series of brief opinion pieces.

++++++++++++++++++++++++

Only God knows, might have been the answer of Indonesian Constitutionalism. In Indonesia, belief in One God is part of constitutional identity. What might sound like creeping Islamisation is in fact a pretty remarkable example of religious conciliation – different gods are viewed as manifestations of the same "reality". In a recent judgment, the Indonesian Constitutional Court declared that all laws must always be "illuminated by divine enlightenment". IGNATIUS YORDAN NUGRAHA (EN) walks us through the judgment and constitutional theocracy in **Indonesia** – a country that is very difficult to understand, even for Indonesians themselves, he admits.

In December 2024, four children disappeared from one of **Ecuador**'s poorest neighbourhoods and were later found killed. ERICK GUAPIZACA (EN) examines how this case exposes profound human rights violations by the Ecuadorian state. He underscores the need for institutional reforms and effective oversight to address human rights violations.

In the EU, the 2022 directive on **adequate minimum wages** might soon be a thing of the past. Denmark considered the directive to exceed EU competences and brought the matter before the European Court of Justice. On 14 January, Advocate General Emiliou delivered his opinion – and surprisingly recommended that the directive be annulled in its entirety, as MARTIN HÖPNER (GER) reports.

Last week, we discussed Friedrich Merz's calls to deprive criminals with dual **citizenship** of their German one. Both DANA SCHMALZ (EN) and VICTORIA KAUTZNER (GER) doubted this would be constitutional. This week, OLE ALDAG (GER) adds to the debate. He argues that while states are generally sovereign in defining their own rules for the deprivation or loss of citizenship, this sovereignty is limited by international law, even if the state relies on internal security reasons.

Yet again, security was found insufficient as a reason: In a ruling from November, the Federal Constitutional Court declared key provisions of North Rhine-Westphalia's **police law** unconstitutional. The provisions allowed for long-term surveillance using technical means, which were found to violate the fundamental right to informational self-determination. MARIUS KÜHNE and DAVID WERDERMANN (GER) explain why the decision did not come as a surprise.

Every year, the same firework of symbolic politics: On **New Year's Eve**, people in Germany go crazy, and the next day, harsher penalties are expected to solve the problem. A current draft proposal aims to better protect individuals who are working for the common good against attacks. While this is a noble endeavour, the proposed criminal law reform is ineffective, conclude CARLA BRUHM and NOAH KISTNER (GER).

A current reform discussion truly deserving of that name, though, concerns German **abortion law**. While much has been written about gender discrimination in that context, disability remains a taboo. THERESIA DEGENER and VANESSA BLIECKE (GER) consider an embryopathic indication which allows abortion based solely on the quality of life of the unborn rather than that of the pregnant woman to violate both international law and the constitution.

Finally, we are happy to announce that our collaboration with the project "**Outstanding Women of International, European and Constitutional Law**" of the University of Hamburg's Faculty of Law continues in 2025! ANN-SOPHIE HARTMANN (EN) kicks off this year's portrait series with Lucretia Mott, the "most belligerent Non-Resistant" who uncompromisingly supported both abolitionism and feminism.

*

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

Yours,

the Verfassungsblog Editorial Team

*If you would like to receive the **weekly editorial** as an email, you can subscribe here.*

*

Help us protect the constitution!

The constitution is increasingly under pressure. To protect it, we need knowledge. And we make that knowledge accessible. **Open Access.**

We publish up-to-date analyses and commentaries. We spark debates. We raise awareness about threats to the constitution and how they can be countered. **In Thuringia. Across Germany. In Europe. Worldwide.**

Many are asking what they can do right now. Our answer: Create knowledge. And thus, protect the constitution.

To do so, we need your support.

Donate now

ABOUT THE AUTHORS

Maximilian Steinbeis
Maximilian Steinbeis is a legal journalist and writer and the founder and director of Verfassungsblog.
Gerhard Reissner
Gerhard Reissner war langjähriger Vizepräsident der österreichischen Richtervereinigung und Präsident der Europäischen Richtervereinigung CCJE.

SUGGESTED CITATION

Steinbeis, Maximilian; Reissner, Gerhard: "Something might be coming": Five Questions to Gerhard Reissner, Verfassungsblog, 17.01.2025, doi: 10.59704/8b5937655c92d761.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20250827-094133-0.