

Constitutional Conventions, Federalism and Resilience

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Austria's Populist Turn

With the elections in September 2024, the populist Freedom Party (FPÖ) became the strongest party in Austria for the first time. However, this did not guarantee its participation in government. Too broad a consensus across parties established that the FPÖ was deemed a security risk for Austria and considered unfit to govern. In January 2025, hopes of averting populism quickly faded. When the negotiations between the conservative, social democratic and liberal parties collapsed, and Chancellor Karl Nehammer resigned and retired, Austria's Federal President Alexander van der Bellen was left with no choice other than giving the FPÖ a mandate to form a government. In this context, two aspects stand out: the role of constitutional conventions in recent months and the political change in the *Bundesländer* (states).

Then and now

Twenty-five years ago, the governments of the EU Member States imposed sanctions on Austria. The reason for this was the participation of the Freedom Party of Austria in the federal government. It was argued that a right-wing populist party such as the Freedom Party does not share European values and poses a threat to constitutional values such as democracy, the rule of law and human rights. Although the sanctions were quickly lifted, the negative influence of the Freedom Party was considerable. For example, the protection of the Slovenian minority in Carinthia through the Austrian Constitutional Court was not accepted by the Freedom Party and led to attacks against the then President of the Court. However, the loss of influence of the Freedom Party in the 2000s was due neither to this nor to the immense national debt caused by corruption in the context of the Hypo Alpe Adria bank scandal, but rather to simple internal struggles within the Freedom Party.

Times have changed in the past 25 years. European governments already include populist parties (e.g. in Italy), are fighting against populist takeovers (e.g. in France) or have long since abandoned the idea of liberal democracy (e.g. in Hungary). The current party leader of the Freedom Party, Herbert Kickl, was not only involved in the party's activities for the last 25 years, but was already Minister of the Interior in the Kurz government (2017-19) and was dismissed by the same Federal President in 2019 who

has now commissioned him to form a government. As Minister, he was responsible for a scandal involving the Austrian secret service, in which he used police forces to conduct a raid on the domestic intelligence service that he supervised in his role.

The re-rise of the Freedom Party

The latest decline of the Freedom Party began with the Ibiza scandal in 2019, which primarily concerned a corrupt vision of the Austrian state by the leader of the Freedom Party Heinz-Christian Strache, aiming to take over the media and power with money from Russian oligarchs. The scandal offered a glimpse of the authoritarian side of the populist coin. While it took more than 10 years for the Freedom Party to regain political strength in the 2000s, its resurgence has been very fast over the past five years. In addition to the traditional xenophobic and anti-Islamic rhetoric, the COVID-19 crisis allowed the Freedom Party to position itself as a party opposed to measures to combat the pandemic.

Russia's war in Ukraine and the subsequent energy crisis, along with high inflation, led to widespread popular dissatisfaction with the Conservative and Green party government. Although the government invested enormous sums, popular discontent grew. Eventually, the situation led the government to an extremely high budget deficit.

Another important factor in the strengthening of populism in Austria is the role of social media. The weakening of quality control in social media, as well as the social media's general problems with regard to the restriction of hate speech, the monetisation of emotions and the possibilities for influencing public opinion (e.g. by Russia) are fuelling radicalisation.

Constitutional conventions

The elections in September 2024 not only led to the victory of the Freedom Party with 28.9 % (Conservative Party 26.3 %; Social Democrats 21.1 %; Liberal Party 9.1 %; Green Party 8.2 %), but also to a discussion about constitutional conventions. Traditionally, the Federal President gives the winner of the parliamentary elections the mandate to form a new government. The Federal President deviated from the constitutional convention by arguing that all other parties had declared that they would not cooperate with the Freedom Party. Therefore, in order to save time, the Federal President gave the mandate to the second-strongest party. The incumbent conservative Chancellor, Karl Nehammer, entered into negotiations with the Social Democrats and the Liberal Party. Although a narrow majority would have been possible without the liberals, they were included in the negotiations for a stable majority.

The Freedom Party was able to provoke a debate about an unauthorised deviation from the constitutional convention by the Federal President. Interestingly, the majority of parties adhered to another constitutional convention in parliament by electing a member of the Freedom Party as President of the National Council, the first chamber of the Austrian Parliament. Only the Green Party spoke strongly against this constitutional convention.

Remarkably, the newly elected parliamentary president of the Freedom Party, Walter Rosenkranz, immediately distanced himself from parliamentary practice by inviting the illiberal Hungarian head of government, Viktor Orbán, to the Austrian parliament. Rosenkranz did this without considering his neutral role as President of the Parliament and against parliamentary usances to invite other parties represented in the Parliament and did not use a European flag at the meeting. Furthermore, by inviting an authoritarian prime minister, he sent a clear signal of disrespect for Austrian democracy. The joint signature of a “Vienna Declaration” between Kickl and Orbán, moreover, created a seemingly formal agreement, which was a simple statement of both persons (calling themselves an alliance of patriots) against the EU, “abuse” of asylum seekers, gender diversity and calling for peace in Europe.

Changing politics at the Bundesländer level

The renewed rise of the Freedom Party of Austria must be understood in the context of the changing acceptance of the Freedom Party by conservative politicians at the state level, who include the FPÖ in state governments as the ‘easier’ choice. Although the Austrian federal states have only limited powers under constitutional law, the political power of the state governors is considerable. While fighting to maintain their electoral ground at the provincial level, primarily conservative state governors, imitating former Chancellor Kurz, not only chose the FPÖ as coalition partners but also aligned themselves with the FPÖ’s position on policies, particularly regarding migrants and asylum seekers. In this way, they failed to retain their voter support, but they also opened up the political acceptance of the FPÖ to their former voters. In doing so, they created a new atmosphere of populist politics while ignoring ‘incidents’ of anti-Semitism and xenophobic slogans from the Freedom Party.

The conservative politician and state governor of Lower Austria, Johanna Mickl-Leitner, recently stated that we were living in an ‘extremely challenging time in which it is important to take very concrete measures for economic recovery and in the fight against Islam’. Although she clarified a few days later that she meant ‘political Islam’, this kind of statement reflects how conservative politics at the state level are shifting towards right-wing populism. The former governor of Styria, also from the conservative party, claimed that a major reason for his defeat at the polls against the Freedom Party in November 2024 was that the Federal President did not mandate the Freedom Party at the national level, but the conservative party (i.e. his own party) to form a government. While ignoring his own deficits in local state politics, he paradoxically tried to explain his defeat against the Freedom Party by saying that federal politics had not promoted the Freedom Party at the national level. Other conservative state governors, such as in Upper Austria or Vorarlberg, have also changed their coalition partners in recent years, significantly from the Green Party to the Freedom Party.

To summarise, we can say that politics at the state level (in a federal country) has played and continues to play a significant role in the rise of populist parties at the national level. State governors have not only integrated populist politicians, but have also adopted

populist rhetoric instead of developing long-term strategies to tackle local challenges.

Risks and resilience

Unlike the German AfD, the Freedom Party in Austria has been in power in Austria again and again over the last 55 years. Each time the Freedom Party was part of a federal government, its influence increased a little and the unacceptable became normalised. The Freedom Party gradually became more radical, shifting from a populist right-wing party to an extreme-right party, with anti-democratic tendencies. It will now be the responsibility of the conservative party either to confirm its role as the leading state party of Austrian democracy in the Second Republic, protecting the constitutional values, or to position itself as a party that becomes the footman of populism and authoritarianism.

The situation in Austria can be compared to that in Hungary in 2010 in many ways. A populist party leader who has been humiliated but also radicalised over the years, weakened opposition parties and an overall dissatisfied society is not a good starting point for upholding constitutional values. The resilience of the Austrian constitution and its constitutional framework is generally stronger than in Hungary. The constitutional structure includes proportional electoral law, a federalist system, the direct election of the Federal President, the longer terms of office of the judges of the Constitutional Court and the concept of the basic principles of the constitution, which can only be changed with a two-thirds majority in parliament and an additional referendum. However, these constitutional features of institutional resilience are also relative and could only delay developments if radicalisation progresses. The newly acquired power of the Freedom Party currently represents less than a third of the votes (instead of a two-thirds majority in Hungary), but the risk of widespread damage from a government led by the populist Freedom Party remains very high.

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