

The Long-lasting Effects of Austria's Brief Governmental Crisis

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Konrad Lachmayer

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Effective Accountability Mechanisms in Austrian Constitutional Culture

Former Austrian chancellor Sebastian Kurz, who dominated the political arena in the last years, left politics at the begin of December 2021. This political earthquake led to a significant governmental reshuffle. After four years, an era of Austrian neo-conservative politics ended.

The politically dramatic aftermath ensuing since has been caused by the strengthening of two constitutional accountability mechanisms some years ago. Firstly, in 2014, a unanimous decision changed the competence to establish a parliamentary committee of inquiry from a parliamentary majority decision to a right of the opposition parties. The constitutional empowerment of the opposition parties to control the government effectively initiated a process which did not only create a new dimension of transparency but also raised the level of political accountability in Austria. Secondly, the role of the public prosecutors cannot be overestimated. Traditionally, public prosecutors were understood as part of the Austrian administration; a constitutional amendment in 2008 led to a new provision of the Austrian Constitution (Art. 90a), which stated that public prosecutors are authorities of the judicial branch. This new self-understanding of independence of the public prosecutors (while still bound by the instructions of the Minister of Justice) significantly contributed to the effectiveness of accountability mechanism towards the Austrian government.

Public prosecution forced the political resignation of the Chancellor

At the end of September 2021, rumours that the offices of the (governing) conservative People's Party had (again) been searched led to a rather curious press conference, along with press releases by party members stating that house searches by the public prosecutors would be pointless, as there was no new evidence to be found and all data had already been deleted. Nevertheless, house searches did indeed take place on October 6, 2021 and Chancellor Sebastian Kurz (the then-head of the People's Party) resigned three days later, on October 9, 2021. The primary cause for his resignation, however, was the leak of the public prosecutors' 104-page search warrant, which revealed potential criminal activity in the Chancellor's immediate personal circle. While all criminal charges have not yet been clarified and the presumption of innocence still applies, the general picture presented by the warrant of the Chancellor and his

companions led to intense political pressure from the Green Party, the junior partner in the government coalition, who argued that the Chancellor was no longer capable of carrying out his political duties and should resign.

The opposition parties (the social-democrat SPÖ, right-wing populist FPÖ and liberal NEOS) pledged to bring a vote of no confidence against the government on October 12, 2021. While the Green Party argued that the People's Party had to resolve the problem of a Chancellor no longer beyond reproach, the opposition parties declared their willingness to support a transitional form of government. Following political developments in Israel and Hungary, where opposition parties with little in common united to cooperate against a dominant politician, the Austrian opposition parties seemed willing to establish a politically disparate coalition government excluding the People's Party. However, the Green Party explained (retrospectively) that they were willing to vote in favour of the no-confidence motion against the Chancellor, but did not intend to form a coalition government with the opposition parties. They declared themselves willing to cooperate with the opposition parties to clear up the corruption allegations and to decide on a new budget. Nevertheless, they expected the Chancellor to resign.

New elections, however, were not in the interests of any of the Austrian parties. The People's Party was politically damaged by the scandal and could only expect major losses. The Social Democrats were unable to make political capital from the situation and the Freedom Party were still lacking political credibility as a result of the Ibiza affair in 2019. Meanwhile, the Green Party and the liberal NEOS could also not expect to profit significantly from new elections, which would therefore only be hugely expensive for all parties without bringing any guarantee of success.

The Federal President was heavily involved in attempts to resolve the governmental crisis, and the Chancellor's resignation quickly followed, though the coalition between the People's Party and the Green Party remained. The conservative foreign minister Alexander Schallenberg became (the first aristocratic) Chancellor (of the Austrian second republic after 1945). After the complete withdrawal of Kurz from politics in December 2021, Chancellor Schallenberg returned to his role as Foreign Minister and the former Minister of Interior Nehammer became Chancellor.

The strength of parliamentary committees of inquiry

To understand the accusations that led to the resignation of Chancellor Kurz, we have to go back in time. The decisive event in the rise of Sebastian Kurz took place in 2017, when, as Foreign Minister, he took over the People's Party leadership, initiated re-elections and emerged as a clear victor, with a coalition government subsequently formed with the right-wing populist Freedom Party (FPÖ), leading to his first chancellorship. The anti-establishment weekly newspaper "Falter" revealed in 2017 that Kurz and his allies had already planned their strategy for taking over the party back in 2016. The former conservative leader, Reinhold Mitterlehner, who published a book about the hostile takeover in 2019, confirmed that Kurz had obstructed the government's work in 2017, in order to become the new party leader. The parliamentary committee of inquiry

(investigating the Ibiza affair) revealed that several conservative businessmen began providing financial support for Kurz's ambitions in 2016 and 2017, to circumvent the official People's Party resources. In other words, the strategic take-over of the People's Party was planned over a long period of time by a small team backed by certain conservative politicians, wealthy businessmen and other supporters. This information contradicted Kurz's own narrative in 2017, when he had presented himself as "a knight in shining armour".

The parliamentary committee of inquiry regarding the Ibiza affair created pressure on some of Kurz's colleagues, e.g. the Minister of Finance, Gernot Blümel, or the CEO of the Austrian state holding PLC, Thomas Schmid, who was forced to resign. The pressure on Chancellor Kurz increased in spring of 2021, when he became the subject of a formal investigation for allegedly providing false testimony before Parliament (regarding the aforementioned affairs). The combined findings of the parliamentary committee of inquiry and the Public Prosecutor's Office for Combating Economic Crimes and Corruption led to the latest house searches, based again on chat protocols between Thomas Schmid and Chancellor Kurz and his colleagues.

The protocols revealed that public opinion polls (provided by a tabloid newspaper) had been manipulated in 2016 by Kurz's team, in order to increase his popularity. This manipulation was carried out with the help of fake studies commissioned by the Ministry of Finance. Thomas Schmid was general secretary of the Ministry of Finance at the time and thus organised the manipulation using taxpayers' money (around 0.8 million euros). Although no evidence of active participation on the part of Kurz has yet been produced, the chat protocols do suggest that he was involved in some way. While any criminal responsibility will be clarified over the coming months, the political pressure became too intense for Kurz to remain chancellor. While back in 2017, the rise of Kurz to become the youngest Austrian chancellor in the republic's history seemed a perfect story, the cracks that then appeared became so large that he was forced to take political responsibility for the situation and resign.

The interplay of public prosecution and parliamentary committees of inquiry

The resignation of Chancellor Kurz was the culmination of the work of the Parliament and the public prosecutor's office over the last two years. Following the Ibiza affair in 2019, which led to the previous government crisis in Austria (see here), Parliament established a parliamentary committee of inquiry, which looked into the presumed corruption of the coalition government formed of the conservative People's Party and the right-wing populist Freedom Party. While the committee initially focused on scandals involving the Freedom Party, the investigations increasingly shifted towards developments in the People's Party and the activities of Chancellor Kurz. The committee's investigations led to reports being submitted to the public prosecutors. At the same time, the public prosecutor's office was studying several instances of corruption (their investigations initiated in many cases by the parliamentary revelations). Details of the criminal investigations were leaked to the public, and this again affected the parliamentary inquiries. The joint work of

parliamentary opposition parties and the public prosecutor's office proved highly effective in revealing hidden strategies and incidents. The results of these revelations have already been described [here](#) and led to criminal investigations against the Chancellor for allegedly providing false testimony to Parliament. These investigations are still ongoing.

This whole affair illustrates the effectiveness of both the separation of powers and the checks carried out by Parliament and the courts regarding the government. Interestingly, only the combined effects of the legislative and judicial control powers were able to reveal and put a stop to this instance of corruption. The Austrian situation can by no means be idealised, however. The revelations show that manipulation of the media and presumed criminal activities had a significant impact on democratic procedures and high-level efforts on the part of Parliament and the judiciary were required to reveal this.

Further steps towards judicial independence and governmental transparency

The constitutional corrections towards more accountability mechanisms for those in power are not completed yet. Further steps are necessary to foster the constitutional approach already taken. For decades, the independence of the public prosecutor's offices has been debated in Austria. Yet, the Minister of Justice, Mrs. Alma Zadic, has started [another attempt](#) to establish a Federal Attorney General Office. This Office would substitute the Minister of Justice as the head of public prosecution and would thus create full independence. Beside the strengthening of the public prosecutor's offices, the even bigger change of constitutional culture concerns the enactment of a Freedom of Information (FOI) Act in Austria, which is still missing. The introduction of a FOI Act has been debated for a long time, but since the days of the Austrian monarchy, the paradigm of official secrecy (*Amtsverschwiegenheit*) has dominated Austrian governmental self-understanding. The events of the last years have clearly showed that it is necessary for Austria to follow the example of all other EU member states and to establish a concept of governmental transparency. Without any doubt, the implementation of these constitutional concepts (independence of public prosecutors and establishment of a FOI Act) would significantly impact the effectiveness of accountability mechanisms in Austrian constitutional culture.

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Konrad Lachmayer Konrad Lachmayer is a Professor of Public Law and European Law at the Sigmund Freud University Vienna.

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