

I CONGRESSO INTERNACIONAL DE JUSTIÇA E MEMÓRIA – I CIJUM

DITADURAS NA AMÉRICA LATINA E NO MUNDO II

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Apresentação

Recientemente se llevó a cabo el importante evento presencial brasiliano, Congreso Internacional de Justicia y Memoria (I CIJUM), esto es, el 02 de diciembre de 2023 y que tuvo como temática: “Enfrentando el legado de dictaduras y gobiernos autoritarios”. El mismo que fue organizado por la Universidad de Itaúna (UIT), a través de su Programa de Pos- graduación en Derecho, con el apoyo del Consejo Nacional de Investigación y Pos- graduación en Derecho (CONPEDI).

Es de resaltar plausiblemente la temática elegida para el mismo. Ello, en tanto que, si no se tiene memoria de lo ocurrido o no se aprende de lo vivido, lo que corresponde penosamente es, repetir los hechos acaecidos, tantas veces, hasta cuando se haya asimilado las enseñanzas dejadas por la historia.

Por ello, la historia es la ciencia que se encarga del estudio de los eventos y procesos del pasado y presente. Para esto, hace una recopilación de documentos o pruebas de los fenómenos sociales y culturales que permiten su reconstrucción y su análisis. Su objetivo principal es estudiar, indagar, comprender e interpretar lo que ha ocurrido en la humanidad, para así entender y aprender de esos hechos y por supuesto no repetir los errores que han ocurrido.

Pero quizá el elemento más significativo por el que aprender historia es importante es que esta materia ayuda a pensar. Las vueltas que han dado las sociedades desde la prehistoria hasta la actualidad han profundizado en la diversidad, en la contradicción, en el uso del poder para imponer y conocer cuáles han sido esos caminos nos ayuda a consolidar nuestro propio criterio sobre la sociedad. Algunos teóricos señalan que la historia es como una rueda de molino que siempre vuelve. Conocer nuestra identidad como personas y sociedades y encaminar nuestros pensamientos hacia esa diversidad son las claves para forjarnos un futuro mejor.

Conocer la historia no nos hará infalibles, ni evitará la reiteración de errores, ni nos anticipará el mañana; pero gracias al estudio de la historia podremos pensar críticamente nuestro mundo y tendremos en nuestras manos las herramientas para entender las raíces de los procesos actuales y los mapas para orientarnos en las incertidumbres del futuro. Desatender la historia

no nos libra de ella, simplemente regala el control. Las personas somos seres narrativos e históricos; ambos rasgos son intrínsecos a nuestra identidad.

Al hablar de historia, resulta imperativo dejar constancia, que, para entender y aprender de la misma, es preciso atender una mirada trifronte. Esto es, que es necesario abordarla desde el enfoque del pasado, del presente y del futuro.

Así, el presente evento se sitúa en el enfoque de lo ocurrido en el pasado, a efectos de aprender de ello y como consecuencia, nutrirse del aprendizaje respectivo. Dicho de manera específica: entender la historia, para no solamente no olvidarla, sino que, además, para garantizar que las dictaduras y gobiernos autoritarios, no vuelvan a repetirse o tener un mejor desempeño en rol fiscalizador de la población al gobierno de turno. Para finalmente, lograr o garantizar el abrace de la justicia.

Y es que la universidad, no solamente tiene por quintaescencia, la investigación y retribución de ciencia y tecnología hacia la población (además, de constituirse en un derecho fundamental, reconocido en la Constitución Política). Entonces, la universidad debe generar conciencia, análisis, para luego de ello, ejercer de manera inmejorable el control del Estado, a través del acertado ejercicio de los derechos fundamentales, a la transparencia y acceso a la información pública, a la rendición de cuentas, a no deber obediencia a un gobierno usurpador, a la protesta ciudadana pacífica sin armas, por citar solo algunos.

Ello, sin dejar de lado la trascendencia del método histórico en la investigación. Y es que sin investigación no existe vida universitaria, equivaldría a una estafa, a “jugar a la universidad”.

El método histórico es propio de la investigación histórica y con él se pretende, a partir del estudio y análisis de hechos históricos, encontrar patrones que puedan dar explicación o servir para predecir hechos actuales (pero nunca a corto plazo). Y se caracteriza por: i) Inexistencia de un único método histórico, ii) No genera predicciones a corto plazo, iii) Busca no solo contar la manera en que sucedieron los acontecimientos del pasado, también se centra en establecer hipótesis sobre por qué llegaron a suceder, lo que hace que muchos no consideren la historia como una ciencia al uso, ya que no establece absolutos, iv) Sus investigaciones se basan en fuentes de la época ya sean libros, documentos, diarios, enseres personales, v) Deben contrastarse las fuentes utilizadas y cerciorarse de que son realmente veraces.

Por ello, la historia se escribe constantemente a medida que vamos encontrando nuevos hallazgos. Hallazgos de los que debe quedar constancia, como expone el escritor Oscar

Wilde: “El único deber que tenemos con la historia es reescribirla”. Y Posiblemente, la razón de mayor peso para la importancia de la historia sea que, al conocerla y estudiarla, nos permite aprender a pensar y razonar por nuestra cuenta. Mientras más conocemos qué sucedió antes de nuestro tiempo, y cómo hemos llegado a la actualidad, con más argumentos contaremos para llegar a conclusiones propias con base en ello. Una habilidad que sin duda constituye un aprendizaje en diferentes aspectos de nuestras vidas.

En ese orden de ideas, deviene en imprescindible conocer, analizar la historia, para poder defender la democracia, el libre desarrollo de los pueblos, por ejemplo. Aunque, si bien es cierto, no necesariamente es lo mejor, es lo mejor que tenemos. Y los problemas de la democracia, deben ser enfrentados con más y mayor democracia.

Lo señalado no resulta ser de aplicación sencilla o menor, puesto, que por filosofía se sabe que el ser humano es marcadamente anti democrático, en vista de su naturaleza jerárquica y territorial.

En consecuencia, la relevancia que reviste el presente Congreso Internacional, cobra mayores ribetes y trascendencia.

Amerita, resaltar el rotundo éxito y tremenda acogida, por parte de conferencistas y asistentes. Es de apostrofar también, la masiva recepción de los casi 200 capítulos que formarán parte de los e- Book respectivos.

Por ello, felicitamos muy de sobremanera a los señores miembros de la Coordinación General, Profesores Dres. Façal David Freire Chequer, Márcio Eduardo Senra Nogueira Pedrosa Moraes, Fabrício Veiga Costa, Deilton Ribeiro Brasil y Secretaria Executiva Dres. Caio Augusto Souza Lara y Wilson de Freitas Monteiro.

Así también, expreso mi profundo agradecimiento a mi amigo, el renocido jurista, Dr. Deilton Ribeiro Brasil, por haberme extendido la generosa invitación a elaborar las presentes líneas, a modo de presentación.

Finalmente, hacemos votos, a efectos que se continúen llevando a cabo eventos de tan gran trascendencia, como el bajo comentario, con el objetivo de fomentar la investigación, mejorar el sentido crítico de los estudiantes, procurar mejores destinos y plausible evolución de los pueblos, evitar nuevas dictaduras, gobiernos autoritarios, entre otros; sobre todo, en estos tiempos en los que la corrupción se ha convertido de manera muy preocupante y peligrosa, en un lugar común.

Arequipa, a 19 de enero de 2024

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AUTOCRACIAS ELEITORAIS: ANÁLISE SOBRE A DEGRADAÇÃO DA DEMOCRACIA HÚNGARA

ELECTORAL AUTOCRACY: ANALYSIS OVER THE DEGRADATION OF DEMOCRACY IN HUNGARY

João Pedro Assis da Rosa ¹

Resumo

Este resumo expandido aborda o retrocesso da democracia na República da Hungria, destacando como o governo atual consolidou um poder autocrático, apesar das eleições livres e do sistema multipartidário. Na era contemporânea, a institucionalização de mecanismos legais não é suficiente para garantir uma República democrática, ainda sendo possível construir uma "autocracia eleitoral". O artigo se concentra na situação húngara como um exemplo a ser considerado para evitar fenômenos semelhantes no Brasil, um país que enfrenta desafios na manutenção da democracia no mundo atual.

Palavras-chave: Democracia, Hungria, Autocracia eleitoral

Abstract/Resumen/Résumé

This expanded summary discusses the democratic decline in the Hungarian Republic, emphasizing the current government's consolidation of autocratic power, despite free elections and a multi-party system. In the modern era, legal mechanisms alone don't guarantee a democratic Republic, potentially leading to an "electoral autocracy." The article uses the Hungarian case as a cautionary example for preventing similar issues in Brazil, a nation grappling with democratic challenges in the present world.

Keywords/Palabras-claves/Mots-clés: Democracy, Hungary, Electoral autocracy

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1. INITIAL CONSIDERATIONS

Hungary is a millennia-old nation that has occupied a prominent position in the Carpathian region and throughout Europe over the past centuries. It was part of major political structures such as the Austro-Hungarian Empire, participated in World War II as an Axis power, entered the Cold War under Soviet influence, and today presents itself as a Western-style democratic republic.

Regarding the research methodology, this expanded abstract used, based on the classification by Gustin, Dias, and Nicácio (2020), the legal-social methodological approach. As for the generic type of research, the historical-legal type was chosen. In turn, the reasoning developed in the research was predominantly dialectical. Concerning the research genre, a theoretical-bibliographic research approach was adopted.

2. HISTORICAL CONTEXT

The current Republic of Hungary is the result of a long historical process that spans centuries of political, cultural, and social transformations experienced by the Hungarian people. In a highly condensed form, in the 11th century, migrants from the Ural Mountains founded the Kingdom of Hungary, which evolved into the Austro-Hungarian Empire in 1867. After World War I, Hungary was defeated, losing territories in the Treaty of Trianon. During World War II, Hungary aligned with the Axis powers. After the war, it experienced Soviet occupation and strong repression, with the 1956 Revolution followed by a Soviet invasion, leaving a deep mark on the country's recent history. Hungary underwent reforms in the 1960s and 1970s but remained within the Soviet sphere of influence. In the 1980s, Soviet power weakened, leading to significant political changes. The Communist Party dissolved its power, and the 1949 Constitution was heavily amended to create a Democratic Republic. With the Fidesz party's absolute majority government rewriting the Constitution in 2011, which is still in force at the time of writing this summary, a central point of the democratic crisis in the country.

3. TECHNICAL ANALYSIS OF THE GOVERNMENTAL POLITICAL SYSTEM

Hungary, legally established according to the 2011 Hungarian Constitution, is a Unitary, Parliamentary, Unicameral, and Multi-Party Democratic Republic. It divides the three branches of government: The Legislative Branch, with exclusive powers vested in the National Assembly, responsible for electing the President of the Republic, the Prime Minister, the President of the Supreme Court, and the Chief Prosecutor. The central governing body is the Council of Ministers, led by the Prime Minister, responsible for governing the government's

bodies and state policies. The Assembly consists of 199 members, requiring a minimum of 100 seats for a majority to form a government. The Executive Power and the government itself are coordinated by the Council of Ministers, which includes various ministries such as Defense and Justice. The Hungarian judiciary is a topic of intense political debate. At the highest level of the Hungarian judicial system is the Supreme Court, with three levels below it: regional appellate courts, regional courts, and district courts. Controversy surrounds the creation of the National Judicial Office in a constitutional reform by the Fidesz party, which appoints judges, regulates jurisprudence, and constitutionality. Despite the National Judicial Council's role in balancing power, EU institutions and politicians have expressed concerns about the independence of the Hungarian judicial system.

4. VIKTÓR ÓRBAN, FIDESZ, AND HUNGARIAN DEMOCRACY

Fidesz is a Hungarian political party founded in 1988 by a group of young liberals. In the 1990s, the party achieved electoral success by forming a center-right government coalition with conservative parties. However, due to corruption scandals, Fidesz lost the 2002 elections and spent two terms in opposition. In 2010, Fidesz returned to power with a landslide victory. Since then, the party has been accused of authoritarianism and using the state apparatus to perpetuate itself in power. Viktor Mihály Órban, leader of Fidesz since its founding, began his political career by criticizing the Hungarian socialist system, advocating for liberal platforms and Western alignment. He was elected Prime Minister of Hungary in 1998, leading a conservative center-right coalition and negotiating Hungary's NATO membership.

Despite his history, he transformed Fidesz from a classical liberal right-wing party to a conservative right, emphasizing Hungarian national and ethnic identity as the core of his political ideology, advocating unwavering support for Catholicism as the moral compass of Hungarian culture. Internationally, he adopted a seemingly contradictory stance, vehemently criticizing what he calls the moral decay of the West while positioning Hungary at the source of European public funding. Since his victory in 2010, significant legal reforms were enacted, with the 2011 Constitution fundamentally reflecting Fidesz's vision for Hungary's future and establishing the so-called "illiberal democracy" as the ideological key to its highly authoritarian decisions, such as increased media repression and control over the judiciary. From his perspective, authoritarian governments such as China and Russia are more efficient at dealing with social problems and protecting their own population. The lack of freedom of press or formal opposition in these countries are, to him, a matter of no concern.

5. DEGRADATION OF HUNGARIAN DEMOCRACY

Throughout the last decade, many activists and international institutions have denounced that the Hungarian government is progressively establishing a autocracy as form of government, combating its position by controlling the publica narrative of events, using the institutions in their electoral favor and blocking international attempts to help pollical groups anti-Fidesz. This situation can be seen by the evolution of how freedom in Hungary is perceived over the world. This situation can be seen through the fact that international measurements like the Democracy Index and the Freedom House have lowered their evaluation of freedom in the country. Over this topic, the process that culminated on this degradation of Hungarian democracy will be reconstructed over its main aspects.

5.1 THE 2010 ELECTIONS AND THE HUNGARIAN CONSTITUTION

In 2010, the state of democracy in Hungary was tense, given the complex electoral balance between Fidesz and the Hungarian Socialist Party (MSZP) in the previous two elections. With an absolute majority in the 2010 elections, the new Fidesz government initiated the drafting of a new Constitution, originally proposed through amendments made in 1989 to the 1949 Constitution. With this absolute majority, the government began the creation of a new constitution marked by a lack of transparency noted by the Vienna Commission in 2011. The discussions were influenced by Fidesz and took place "at the party's directives" and "behind closed doors." The result of this process was the consolidation of Fidesz's control over Hungarian democracy, with the complicating of electoral laws, the reduction of seats in the National Assembly, the redrawing of electoral districts favoring the party, and the implementation of subsequent laws with little opposition due to the supermajority, effectively securing Fidesz's victory and undermining the democratic nature of the Hungarian system.

5.2 FREEDOM OF THE PRESS

Since the 2010 elections, which saw the return of Fidesz and Viktor Orban to the position of Prime Minister, international institutions and Hungarian activists have been reporting a broad process of media control and manipulation by the Hungarian government. This process can be identified by several key elements:

Ideological Axis: Over the past decade, Orban and his supporters have become prominent advocates of "anti-globalist" theories. Essentially, proponents of these theories argue that there is a broad political movement composed of political leaders, big businessmen, and individuals associated with media outlets aiming to accelerate the sociocultural process of

globalization, i.e., rejecting nationalist sentiments in favor of a common global culture. In Hungary, nationalist movements associated with Fidesz see billionaire Hungarian businessman George Soros, who runs the "Open Society" foundation for private funding of social projects, especially in education, science, and migration, as the ultimate symbol of what they are fighting against. According to the Hungarian prime minister, in messages on his personal website and in interviews with media outlets, billionaire George Soros is part of a globalist plan to flood Hungary with immigrants and destroy the Hungarian nation's identity as idealized by Fidesz. Institutions like the European Union, the United Nations, and NGOs are seen as components of the broad network funded by figures like Soros. Over the years, accusations against the alleged actions of George Soros and other globalists have become the central justification for Orban's policies against press freedom.

Corporate Axis: According to the analysis of the Center for Media, Data, and Society at Central European University, the Central European Press and Media Foundation (KESMA) is a holding company of media institutions created in 2018 as part of an apparently spontaneous movement of all Hungarian media outlets identifying as pro-government. It comprises nearly 470 media outlets, including television, print newspapers, magazines, and social media, with an estimated value of 88 million euros. These media outlets were purchased by political and economic allies of Viktor Orban and donated to the foundation, led by Gábor Liszkay, a close ally of Hungary's leader.

Regulatory Axis: According to the European Commission's analysis, Hungary, under Viktor Orban's leadership, has undergone an intense process of state institution assimilation by government agents and interests. This is evident in the issue of government control over Hungarian media, such as the co-optation of regulatory agencies like the "Media Council." This can be seen in the 2021 revocation of the license of the anti-Fidesz radio station "Klubradio," a process criticized by Human Rights Watch, the European Union, and nearly all journalism associations worldwide.

5.3 RULE OF LAW AND THE EUROPEAN UNION

The idea of Rule of Law consists in the insurance of the ones governed that their government follows the course of Laws as well, that their decisions are not unpredictable and arbitrary, but follow a well stabilized system that provides the safety of norm for all citizens. The concept, key to the construction of a Democratic Republic, has been the center of a number of critics from western institutions against Hungary.

The European Union is today a sui generis supranational institution in the world, inadequately explained by classical international law and the internal law of nations. The Union was established under the pretext of creating something new, an extraordinary attempt to promote European coexistence. In the process of accession to the EU, countries like Hungary underwent a lengthy and complex process of legal and institutional alignment of their domestic norms with European law, given that the standards set by the EU, from treaties and agreements to the jurisprudence of the Court of Justice, take precedence over domestic laws of member countries. This introduction is necessary because the European Union and the Hungarian government have been engaged in significant diplomatic and legal confrontations for nearly eight years over Viktor Orban's reforms in the country:

1. In 2015, the European Commission accused Hungary's Asylum Law of violating the principles and values of the Treaty on European Union (TEU).
2. In 2018, the Commission referred the "Stop Soros Law," Hungary's asylum law, to the Court of Justice of the European Union, accusing Hungary of violating Article II of the TEU.
3. Also in 2018, the European Parliament voted to trigger the Article VII procedure, which could suspend Hungary's voting rights, based on the TEU. However, this article requires consensus among all members, and with Poland supporting Hungary (in exchange for similar support), it did not proceed.
4. In 2020, the European Parliament approved a mechanism that allows the blocking of financial resources to countries that violate the principles of the "Rule of Law," requiring only a qualified majority to execute this action.
5. As of the writing of this article, 28 billion euros originally designated for Hungary as part of European funding for the European Common Market with Hungarians remain blocked, citing Rule of Law Principal infractions.
6. In 2020, the European Parliament officially disqualified Hungary as a "Functional Democracy," categorizing it as an "Electoral Autocracy."

In summary, the European response to the decline of democracy in Hungary has been significantly robust, with extensive attempts to isolate Budapest from European institutions, as well as blocking affirmative efforts and financial incentives for the country.

5.4 ELECTORAL AUTOCRACY

Despite all the controversies faced by the Fidesz governments during their 2018-2022 term, the 2023 elections witnessed one of the most remarkable political victories in Hungarian history. This was due to the opposition's attempt to win through the creation of a broad front of

opposition parties to Fidesz. The alliance, named "United for Hungary," included more than ten parties and movements from various political spectrums, ranging from left to center-left, aiming to defeat the Fidesz-KDNP alliance to prevent Viktor Orban from securing another consecutive term. However, the conservative right-wing alliance won the election with a significant advantage, receiving over 60% of the votes and securing 136 seats in the National Assembly, giving them an absolute majority to govern without forming coalitions. The resounding victory of Orban in the 2023 elections has made discussions about authoritarian tendencies much more complex because the changes that the party has implemented in the country enjoy popular support. However, despite being internationally recognized as legitimate and free, the elections were not considered fair, as the government did not ensure fair conditions for the electoral process. Various arguments support these claims, from the clear advantages provided by control of the Media Council in not penalizing KESMA practices to the electoral proportionality rules established by Fidesz over the years that held a large majority in the Assembly, favoring the opposition.

5.5 EXTREMISM AS A DEMAGOGIC WEAPON

Fundamentally, we must analyze the continued rule of Fidesz and Hungarian right-wing autocrats as a demonstration of the influence that alarmist discourse has on the electoral process, especially in the context of contemporary social media. Viktor Orban's rhetoric is carefully crafted to trigger core aspects of Hungarian culture. His relentless defense of Christianity and the "Western Family Model" has been a major focus of his rhetoric, and his arguments have always centered on accusations of moral and political decay against Europe. While claiming the moral high ground, the prime minister has consistently advocated a specific brand of "Hungarian morality" embodied in Fidesz's actions. For example, according to the government's 2018 amendment to Hungary's Basic Law, Christian identity is key to Hungary's national identity. Some of the most notable elements of the process of demonizing supposed moral decay are the campaign to ban gender studies in Hungarian universities and the 2020 legislation to ban transgender people from legally changing their gender. This strategy has garnered both support and criticism, but it effectively builds a solid electoral base for Fidesz by framing them as defenders of national identity, with elections positioned as a battleground between traditional values and European decay.

6. FINAL CONSIDERATIONS

There is, in a remarkably popular way, a "romanticization" of the idea of Democracy. The dream of every individual to have the right to discuss and change their political reality has been the driving force behind thousands of revolts and revolutions throughout human history. However, cases like the decline of Hungarian Democracy serve to demonstrate that if we aim to create a robust democracy, it is not enough to base it solely on a legal perspective, as positive laws are not eternal. It is necessary to build a popular political culture, make safe sources of information accessible to everyone, and combat political groups that seek to undermine democratic institutions.

Brazil is an obvious example of this situation. In just over 130 years of the Republic, we have constantly struggled to establish a solid democracy, facing challenges in facilitating free and fair elections, enduring dictatorships, and constant authoritarian impositions. In the context of the 2022 elections, the country experienced a series of direct attacks on democratic stability and electoral credibility, even with the support of significant portions of the population. Merely having functional institutions is not sufficient if there is no trust from the population in these institutions, and the perspective of Active Citizenship has not been solidified. The modern era presents exponentially more serious challenges with the advent of social media, making it of the utmost importance for democratic republicanism in Brazil to mature, aiming to prevent the system from falling into yet another cycle of failed democracy and populist autocracies.

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