

## SPEECHES

### AN EXAMPLE OF REPUBLICANISM: THE GERMAN PRESIDENCY

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#### I. MEANING OF THE WORD *REPUBLIC*

According to the official name of the “Federal Republic of Germany” (FRG) and according to its Constitution, the *Grundgesetz der Bundesrepublik Deutschland* (Basic Law of the FRG) of May 23 1949, Germany is a republic.<sup>1</sup> The meaning of the word *republic* is, however, ambiguous. The German constitutional doctrine understands *republic* either in a material sense or in a formal sense.<sup>2</sup>

In the material sense, a republic is a nation in which the persons who are responsible for the public are obliged to the common interest (*Gemeinwohl*), and to civic virtues, such as not to be corrupt.

In the formal sense of the word, a republic is a nation in which the Head of State has to be elected for a certain (or limited) period of time. This concept excludes as Head of State a monarch as well as a dictator. In a non-monarchic,

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1 Article 20(1) states: “The Federal Republic of Germany shall be a democratic and social federal state”, and art 28(1) states: “The constitutional order in the States shall conform to the principles of the republican, democratic and social state governed by the rule of law within the meaning of this Basic Law”.

2 See I von Münch, *Staatsrecht I*, Kohlhammer (5th ed, 1993), p 44. For Australian views, see G Winterton, “An Australian Republic”, *The Options*, Report of the Republic Advisory Committee, 1993; G Winterton, *Monarchy to Republic. Australian Republican Government*, Oxford University Press (rev ed, 1994) p 2; G Williams, “A Republican Tradition for Australia” (1995) 23 *Federal Law Review* 133.

democratic state the above limitation precludes the election of a person as Head of State for life.<sup>3</sup> If such an election happens, the so-called republic is in fact a pseudo-republic. An example of such a pseudo-republic was the former Socialist and Federal Republic of Yugoslavia, whose President, the late Josip Broz Tito, was elected for life.<sup>4</sup> After the collapse of the Communist regimes in Eastern Europe, the vast majority of the countries in the world are now republics in the formal sense of the word; some dictatorships and monarchies remain. With regard to monarchies, ex-king Faruk of Egypt after having lost his crown and gone into exile, in France, was wrong in saying: "In the near future there will exist only five Kings, the King of England and the four Kings in a deck of cards".

## II. PROCEDURE FOR THE ELECTION OF THE PRESIDENT

If a republic is a state in which the Head of State has to be elected, the question arises: Who has to elect that person? Since we are talking about democracies, the appropriate answer seems to be that the Head of State should be elected by the people. But this is not the German solution. According to art 54(1) of the Basic Law, the President (*Bundespräsident*) shall be elected by the Federal Convention (*Bundesversammlung*). The Federal Convention is a special Federal State organ, its only right and duty being to elect the President. To use a rather bold comparison, the Federal Convention is like a male ant which dies after impregnating its female companion!

Article 54(3) of the Basic Law prescribes that the Federal Convention consists of the members (which has to be read as *all* members) of the Federal Parliament (the *Bundestag*), and an equal number of members elected by the parliaments of the States (*Länder*) on the basis of proportional representation. The equal number of members elected by the parliaments of the States underlines the idea that the President, although a federal office, is the President of the States and of the Federation. Despite the idea of equal representation of the parliaments of the States in the Federal Convention, it was impossible to include all members of the

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3 According to art 54(2) of the Basic Law, "the term of office of the President shall be five years. Re-election for a consecutive term shall be permitted once only".

4 Article 333.

In view of the historic role of Josip Broz Tito in the National Liberation War and the Socialist Revolution, in the creation and development of the Socialist Federal Republic of Yugoslavia (SFRY), the development of Yugoslav socialist self-management society, the achievement of the brotherhood and unity of the nations and nationalities of Yugoslavia, the consolidation of the independence of the country and of its position in international relations and in the struggle for peace in the world, and in line with the expressed will of the working people and citizens, nations and nationalities of Yugoslavia, the SFRY Assembly may, on the proposal of the Assemblies of the Republics and the Assemblies of the Autonomous Provinces, elect Josip Broz Tito President of the Republic for an unlimited term of office.

Tito was elected in 1974 and died in 1980.

States parliaments in the Federal Convention;<sup>5</sup> the FRG consists of 16 States, with no less than 1,971 members of State Parliaments!<sup>6</sup>

The members elected to the Federal Convention by the States' Parliaments are mostly from within their ranks. The States' Parliaments are, however, entitled to elect different persons to the Federal Convention. In the past, they have elected former prominent politicians, leaders of trade unions and journalists as members of the Federal Convention; even a prominent soccer player has been sent to one of the Federal Conventions! These are, however, rare exceptions; the vast majority of Federal Convention members are serving politicians.

The Federal Convention, which elected the current President in 1994, was composed of 1324 members, namely all 662 members of the *Bundestag* and an equal number of members elected by the States. The number of the members of the Federal Convention is not fixed and may change from time to time.<sup>7</sup> There is currently a debate in Germany about reducing the number of the members of the *Bundestag*.<sup>8</sup>

Why then is the President elected by the Federal Convention and not by the German people directly? The framers of the Basic Law, that is the members of the Constitutional Assembly (*Parlamentarischer Rat*), had three main reasons for this decision.

#### A. An Historical Reason

The framers of the Basic Law were aware of the failure of the Weimar Republic<sup>9</sup> in 1933 and tried to avoid the constitutional and political mistakes which had led to democracy's dark end at that time. According to the Constitution of the Weimar Republic of 1919, the President (*Reichspräsident*) was elected by the people. Although Adolf Hitler was never elected President (he tried it once, but was defeated by Paul von Hindenburg in 1932),<sup>10</sup> the framers of the Basic Law intended to distinguish the new Basic Law as the Constitution of the FRG from the old Weimar Constitution.

Constitutional law in every country is concerned with the effort to avoid mistakes of the past and to find solutions for the future. It is questionable as to whether the election of the Reichspräsident by the people caused the fall of the First Republic. In hindsight, the Constitution did not have enough safeguards

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5 Unlike some other federal states, the FRG only consists of States: no Federal District is permitted by the Basic Law. Article 79(3) prescribes that any amendment to the Basic Law affecting the division of the Federation into *Länder* shall be prohibited

6 The smallest State parliament consists of 51 members (Saarland), and the greatest consists of 221 members (Northrhine-Westfalia)

7 For instance, the first Federal Convention in 1949 was composed of 804 members, the second in 1954 of 1018 members, the third in 1959 of 1038 members, the fourth in 1964 of 1042 members. The number of the members of the *Bundestag* is not fixed by the Basic Law, but only by statute: the Federal Electoral Law (*Bundeswahlgesetz*). Enacted on 7 May 1956 and last amended by the Law of 28 July 1993, art 1(1) provides: "Subject to variations resulting from this law, the *Bundestag* shall consist of 656 members".

8 This number was enlarged considerably after German reunification when the population of the FRG increased from 62.6 million inhabitants to 81.7 million.

9 The small city of Weimar was the seat of the National Assembly which passed the Constitution of 1919.

10 At the election of the *Reichspräsident* on 10 April 1932, von Hindenburg received 19.3 million votes, Hitler 13.4 million votes, Thälmann (the candidate of the Communist Party) 3.7 million votes

against political extremism. The then existing electoral law (proportional representation without a [5 per cent] hurdle clause) led to a splintering of the *Reichstag* into a dozen or more political groups.<sup>11</sup> Second, the Chancellor (*Reichskanzler*) and each Minister could be removed from office by the expression of lack of confidence by the Parliament without electing a successor ("destructive vote of no confidence"), which led to tremendous political instability.<sup>12</sup> Ultimately the causes of the destruction of the Weimar Republic are to be found more in the social, economic and political fields than in the legal field.<sup>13</sup> All these events, developments and feelings had nothing to do with the election of the *Reichspräsident* by the people.

These historical facts should not, however, obscure the role of the then President von Hindenburg in bringing Hitler into power by appointing him as Chancellor on 30 January 1933. According to the Constitution of the Weimar Republic, the President was entitled, but not obliged, to appoint the leader of the strongest group in the Parliament as Chancellor. The political catastrophe of Hindenburg's decision was not brought about by the mode of his election as President but by his personality: Paul von Hindenburg was neither a democrat nor a republican, but a conservative. Although the former field-marshal had feelings of contempt towards Hitler, a former soldier,<sup>14</sup> von Hindenburg regarded him as the "saviour of the Fatherland"; the price paid - the loss of republicanism, democracy, and human rights - was not a problem for the 85 year old.

## B. A Constitutional Reason

The powers of the President of the FRG are very limited. The real power lies with the Chancellor (*Bundeskanzler*), who is elected by the *Bundestag*. Keeping this in mind, the election of the President by the people would be paradoxical. The office-holder with the weaker powers (the President), would have a greater democratic legitimation than the office-holder with the stronger powers (the Chancellor). Such imbalance between the degree of democratic legitimation and the extent of powers would seriously impact the balance of powers between the President and the Chancellor.

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11 The election of 6 November 1932, for example, brought members of 14(!) political parties into Parliament.

12 Between May 1924 and March 1933 (in less than nine years) seven elections to the *Reichstag* took place. All the electoral periods of the *Reichstag* ended before the scheduled time. The Basic Law tries to avoid such an instability of the Government by one of its most important regulations, namely art 67, dealing with the constructive vote of no confidence (*konstruktives Misstrauensvotum*) "The *Bundestag* may express its lack of confidence in the Chancellor only by electing a successor with the majority of its Members and requesting the President to dismiss the incumbent. The President must comply with the request and appoint the person elected."

13 These include: the loss of the First World War and the severe and humiliating conditions of the Treaty of Versailles; the change from the Monarchy to the Republic not by a peaceful change but by a violent revolution; the then existing trend in Europe towards either dictatorial systems (USSR/Stalin, Italy/Mussolini) or at least autocratic systems (Portugal/Salazar, Spain/Franco, Hungary/Horthy, Poland/Pilsudski); the world economic crisis in 1928 and 1932 with huge unemployment figures in Germany; the fear of Communism.

14 Hindenburg called Hitler the *böhmischen Gefreiten* (the "lance-corporal of Bohemia")

### C. Role of the Head of State

The President is the Head of State,<sup>15</sup> not the head of a political party nor the head of the majority of the voters. The President is regarded as “President of all German citizens”,<sup>16</sup> not as the exponent of a specific political wing. This attitude coincides with the idea of the framers of the Basic Law with regard to the election of the President, namely, to avoid a campaign in favour of one candidate and against other candidates, to avoid a spectacle and a bullfight, to avoid the destruction of the authority and political neutrality of subsequently elected Presidents, and to avoid an election of a President which would be, in fact, an election in favour of one political party. A gesture of the respect towards subsequently elected Presidents is expressed in the fact that, according to art 54(1) of the Basic Law, the President shall be elected by the Federal Convention “without debate”. The Federal Convention is no place for political manoeuvring.

## III. WHO CAN BE ELECTED PRESIDENT

Only members of the Federal Convention are entitled to propose a person to be elected as President.<sup>17</sup> The proposals have to be delivered to the President of the *Bundestag*, who acts as the President of the Federal Convention. The proposals contain only personal data and no arguments as to why the proposed person is considered to be a qualified candidate. A declaration of consent of the nominee must have been attached.

Under art 54(1) of the Basic Law every German who is entitled to vote in elections to the *Bundestag* and who is at least 40 years old is eligible to stand for the Presidency. The criterion of German citizenship is not in issue: according to modern Continental-European thinking the Head of State has to be a national of his or her State.<sup>18</sup> Any German who has a domicile or has otherwise been permanently resident for at least three months in the FRG and who is not disqualified from voting due to a judicial decision, or being in custody or accommodated in a psychiatric hospital<sup>19</sup> is entitled to vote in elections to the *Bundestag*. The requirement of having reached forty years of age, while

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15 The term *Head of State* is not used expressly by the Basic Law; but there is no doubt that the President is the Head of State, because he or she has the traditional powers of the Head of State, for example, to exercise the prerogative of pardon in individual cases on behalf of the Federation (art 60(2) of the Basic Law)

16 A phrase frequently employed by past Presidents.

17 Article 9(1) of the Law on the Election of the President by the Federal Convention, of 25 April 1959, amended by Law of 24 June 1975, regulates the details of the election

18 So far, there has been no cause to decide the legal question whether a person with dual nationality (German and another) is eligible. Although as art 54(1) of the Basic Law prescribes only that the candidate be “a German”, dual nationality cannot be an obstacle to the election

19 See for the following regulations arts 12-13 of the Federal Electoral Law. Voting age and the age of eligibility for Federal Parliament under art 38(2) of the Basic Law is 18 - the age of majority since 1974

arbitrary, has never been the subject of controversy.<sup>20</sup> In fact, the youngest person who has been elected President, Walter Scheel, was elected at the age of 55.<sup>21</sup> All other Presidents have been elected at an age of about 60.

Other characteristics of Presidents are considered below.

### A. Membership in a Political Party

All seven elected Presidents have been members of political parties. Four were members of the Christian Democratic Union (CDU), two were members of the Free Democratic Party (FDP), and one was a member of the Social Democratic Party (SPD). No President has been a member of the Christian Social Union (CSU) or the Greens. The surprisingly small representation of the SPD is mitigated by the fact that two other Presidents were members of Coalition Parties at the time of the election.<sup>22</sup>

Though originally members of political parties, each of the Presidents, once elected, have suspended their active party membership. This suspension is not a legal obligation like those enumerated in art 55 of the Basic Law.<sup>23</sup> The suspension of active membership of a President in a political party should rather be regarded as a conventional rule.<sup>24</sup>

### B. Religion

Six of the seven Presidents have been Protestants, the other being Catholic. Undoubtedly any purported regulation which would prescribe a certain religion for the Head of the State of the FRG, or which would make him or her the Head of a State Church, would violate the principle of the neutrality of the State towards churches and other religious associations and also the freedom of religion.<sup>25</sup>

### C. Political Experience

All Presidents have had broad political experience before being elected into office. This experience resulted either from having been a member of Parliament or of the government or both.

The first President, Professor Dr Theodor Heuss, had already been a member of the Parliament in the Weimar Republic. After the end of the Nazi regime he was appointed in 1945 as Minister for Cultural Affairs in a State Government.

20 Not even in the late sixties with students rebellions and the saying at the time, "Never trust a person beyond thirty [years of age]" was there a demand to change that rule

21 This 'youngster' among the Presidents who changed a very old tradition, refusing to allow a postage stamp to be printed with his face His argument: "I do not want people to have to lick my back". Since then, the head of the German Head of State has no longer been a motif for stamps!

22 Heinrich Lübke was from the CDU and Walter Scheel from the FDP.

23 "The President may not be a member of the government nor of a legislative body of the Federation or a Land. The President may not hold any other salaried office nor practise a trade or profession nor belong to the management or supervisory board of an enterprise."

24 It might be of interest to Anglo-Australian scholars that conventional rules are rather unusual in German constitutional practice. German legal doctrine is very hesitant to recognise customary constitutional law.

25 Cf. the Constitution of the Kingdom of Denmark Act 5 June 1953 Part II § 6 ("The King shall be a member of the Evangelical Lutheran Church"), and, of course, the situation in the UK.

In 1948 he was elected as Chairman of the FDP. He served as a member of the Constitutional Assembly and was elected as a member of the *Bundestag* before being elected President in 1949. His successor, Heinrich Lübke, was a member of the Parliament of the State of Prussia from 1931-3 and a member of the State Parliament of Northrhine-Westfalia from 1946-9. He was elected to Federal Parliament in 1949. Before his election as President in 1959 he served six years as Minister for Agriculture and Forestry.

The third President, Dr Gustav Heinemann, was a member of the State Parliament of Northrhine-Westfalia for some years, before being elected into the Federal Parliament in 1949. He developed governmental experience as Minister for the Interior and later as Minister for Justice. In 1969 he was elected President.

Walter Scheel succeeded Heinemann after 21 years in Federal Parliament with experience as a member of the European Parliament, Chairman of the FDP, Minister for Economic Cooperation and Minister for Foreign Affairs.

President Professor Dr Karl Carstens (a specialist in Constitutional Law and European Law) had served for nine years as Secretary of State first in the Ministry of Foreign Affairs, then in the Defence Ministry and in the Office of the Chancellor. He also served as leader of the CDU in the *Bundestag* and as the parliament's President before being elected German President in 1979.

The best known President, Dr Richard von Weizsäcker, has an unusual curriculum vitae. Born in 1920, he studied law in Oxford and Grenoble, completing his law studies after World War II in Göttingen. He assisted the defence of his father who was accused before the International Military Tribunal in Nuremberg because of his position as a high ranking member of the German diplomatic service and who was sentenced in 1949 to seven years imprisonment, but was released only one year later. Richard von Weizsäcker gained his political experience during 10 years' membership of the Federal Parliament, in which he served for some years as one of the Vice-Presidents, and as Mayor of the City State of (then) West Berlin. He was elected President in 1984 with 832 of 1017 valid votes, the best result obtained by any candidate in the first round.<sup>26</sup>

The current President, Professor Dr Roman Herzog, born in 1934, started his professional career as a Professor of Constitutional Law. He was (and still is) a co-editor of a well-known commentary on the Basic Law.<sup>27</sup> He left his academic post in the early 1970s, and became a member of the Government of the State of Baden-Württemberg (in which he served as Minister for Cultural Affairs and Sports, and later as Minister for the Interior). In 1983 Dr Herzog was appointed as Judge of the Federal Constitutional Court, becoming its President in 1987. Dr Herzog became the first judge to be elected President in 1994.<sup>28</sup>

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26 Richard von Weizsäcker improved this result at his re-election in 1989 (881 of 1022 valid votes).

27 T Maunz, G Durig, R Herzog, R Scholz, *Grundgesetz-Kommentar* (Loose-Leaf), Beck, (Oct 1996).

28 It is noteworthy in this connection that for some time in the Weimar Republic the President of the then highest German Court (the *Reichsgericht*) was the deputy of the Head of State. The deputation of the President is now regulated by art 57 of the Basic Law: "Should the President be prevented from performing the duties of office or should the office become vacant prematurely those duties shall be

In summary, the typical German Head of State has the following qualities: *He* is a white German Protestant, married or a widower, has studied law, has not been in business, has joined a political party and has been a member of Parliament for several years, has had a high position in the Government of either the FRG or of one of the States, and at the time of election is around 60 years of age.

#### IV. RIGHTS AND DUTIES OF THE PRESIDENT

The President's rights and duties are strictly limited. The framers of the Basic Law did not want to create a substitute for the Kaiser and consequently did not wish to have the President popularly elected.

An example of the limitation of the powers of the President is the fact that (nearly) all orders and directives of the President require the countersignature of the Chancellor or the appropriate Minister.<sup>29</sup> An interesting question of Constitutional Law has arisen from a case involving President Heinrich Lübke. In 1965 President Lübke gave an interview to a Swiss weekly without the consent or knowledge of the Chancellor. In this interview he expressed his opinion that there was a need for the country to be governed by a "Great Coalition" of the CDU and the SPD. At the time the governing coalition was constituted by the CDU and the FDP. The Chancellor and other government members were not amused. The opinions of legal scholars as to whether the President was entitled to express his opinion on such a politically sensitive question in a foreign newspaper have been divided. One legal view is that a press interview is neither an "order" nor a "directive" of the President and, for this reason, does not need the countersignature of the Chancellor or the appropriate Minister. Others argue that art 58 of the Basic Law should not be interpreted only from the text but from the purpose of that provision; namely to bind all legal or politically important activities of the President to the countersignature of the Chancellor or the appropriate Minister, who, unlike the President, have parliamentary responsibility. The dispute between those two legal opinions has never been resolved. In practice, the President does not ask for a countersignature of speeches, interviews etc, but informs the Chancellor or the appropriate Minister in advance about relevant ideas.

The traditional constitutional powers of the President as Head of State are not in question. Nevertheless, these powers are restricted by the following tenets of the Basic Law. Firstly, according to art 59(1) of the Basic Law, the President represents the Federation in its international relations and concludes treaties with other states on behalf of the Federation. In practice this means that the President

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performed by the President of the *Bundesrat*" (the *Bundesrat* is a Second Chamber similar to the Australian Senate, representing the States on the federal level)

29 Article 58 of the Basic Law states that "Orders and directives of the President shall require for their validity the countersignature of the Chancellor or the appropriate Federal Minister. This shall not apply to the appointment and dismissal of the Chancellor, the dissolution of the *Bundestag* under art 63, or a request made under art 69(3) "

ratifies treaties with other states, but is not entitled to make foreign policy. Secondly, under art 60(1) of the Basic Law, the President shall appoint and dismiss federal judges, federal civil servants and commissioned and non-commissioned officers of the Armed Forces.<sup>30</sup> In reality, the President rubber-stamps the appointments which have been proposed by the Chancellor or the appropriate Minister. In only very few cases has the President objected to the proposals, in some cases with success, in other cases without success. The only case (to my knowledge) in which a President has rejected a proposal to accredit an envoy occurred when the then President Theodor Heuss refused to accredit a person who was nominated by the Government as German Ambassador to Australia. Thirdly, although the Chancellor is elected by the *Bundestag* "without debate upon the proposal of the President", the President would never dare to propose a candidate who did not have the support of the majority in Parliament.

The President does, however, have certain important reserve powers. If, for instance, the candidate for the office of the Chancellor has not - even in a third ballot - won a majority of votes of the members of the *Bundestag*, the President has the choice either of appointing the candidate who received the most votes (that is in this case: the 'relative majority') or of dissolving the *Bundestag* within seven days. This alternative (regulated in art 63 of the Basic Law) means that the President has the power to decide whether the country should be governed by a Chancellor without the absolute majority in Parliament or to open the way for a general election.

Another political crisis may occur if a motion of the Chancellor for a vote of confidence is not carried by the majority of the members of the *Bundestag*. According to art 68(1) the President is entitled but not obliged to dissolve the Federal Parliament within 21 days<sup>31</sup> upon the proposal of the Chancellery. In this case, again, the President has some room for political manoeuvring.

Crisis management is not the daily job of the President. His or her work is to sign Federal Laws and to promulgate them in the Federal Law Gazette. Since the birth of the FRG in 1949, the question of whether the President has the right to refuse the signature of a Law if there are doubts about the law being in accordance with the Constitution has been discussed.<sup>32</sup> Such a refusal has not happened very often (in fact less than 10 times),<sup>33</sup> but the question remains, nevertheless, one of the big topics in German Constitutional Law. The prevailing opinion among scholars is that the President has, without any doubt, the power to check whether the Federal Law, which is to be signed, is in

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30 According to art 60(3) of the Basic Law these powers may be delegated to other authorities, which has been done to a rather large extent

31 Article 68 reads as follows.

(1) Where a motion of the Chancellor for a vote of confidence is not carried by the majority of the Members of the Bundestag the President may, upon the proposal of the Chancellor, dissolve the Bundestag within 21 days. As soon as the Bundestag elects another Chancellor with the majority of its Members it may no longer be dissolved.

(2) 48 hours must elapse between the motion and the vote

32 See, for example V Epping, "Das Ausfertigungsverweigerungsrecht im Selbstverständnis des Bundespräsidenten" (1991) 46 *Juristenzeitung* 1102.

33 Indeed from 1961-7, only 30 advisory opinions were even sought.

accordance with the Constitution in the formal sense, that is, with regard to the procedure. Different views are held with regard to the question whether a Federal Law violates Basic Rights. One view argues that a Law which violates Basic Rights is not in accordance with the provisions of the Basic Law, and for this reason the President cannot be obliged to sign the Law. The opposing view argues that there is no need for such a presidential power because of the jurisdiction of the Constitutional Court. A pragmatic solution to the problem has been practised twice: President Karl Carstens, having had doubts whether a Federal Law on State liability was within the legislative jurisdiction of the Federation, signed the Law; following the signature he wrote a letter to the President of the *Bundesrat*, in which he expressed his doubts. Some years later the Constitutional Court confirmed the opinion of President Carstens by declaring the Federal Law on State liability as violating the Constitution. In another case, President Richard von Weizsäcker informed the Chancellor, the President of the *Bundestag*, and the President of the *Bundesrat* that he did not intend to sign a Federal Law on the privatisation of air transport safety control. The President argued that (without having objections against the privatisation of the air control as such) he was firmly convinced that the Law would only be in accordance with the Constitution if the Basic Law were amended (which subsequently occurred).<sup>34</sup>

## V. CONCLUSION

The President of the FRG is neither an uncrowned king nor the first servant of the state. The President's powers are not comparable with the power of the President of the United States, the President of France or the President of Russia. The President of the FRG is not an active battleship but rather a fleet in waiting, who - only in a situation of a political crisis - has the power to make an important decision. In daily political and constitutional life the President has authority but no might. His or her right and duty is, according to the traditional role of the Head of State, "to warn, to encourage, to be informed". Or, in the words of President von Weizsäcker, "[t]o put questions, to encourage answers, but not to offer recipes". The President is not a person who holds office by the grace of God,<sup>35</sup> but by an election. The term of the office of the President is limited. The regulation of this limitation in the Basic Law is an interesting and reasonable construction: according to art 54(2) "the term of office of the President shall be five years. Re-election for a consecutive term shall be permitted once only". Three of the past Presidents served for one term only, three have been re-elected for a second term. No President has stood for a third election, which could have

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34 The amended art 87(d)(1) reads now as follows: "Air transport shall be the direct responsibility of the Federation. The question of public or private status shall be determined by federal legislation"

35 Orders of the German Monarch started with the words: "Wir, Wilhelm, von Gottes Gnaden Deutscher Kaiser, König von Preußen etc. ." (translated "We [the royal plural], Wilhelm, by Grace of God German Emperor, King of Prussia etc. ").

been possible only after a five year interruption.<sup>36</sup> Due to the obvious fact that politicians tend to cling to their office, art 54(2) of the Basic Law seems to be a good idea. I would support a transfer of this regulation to other political offices, for instance with regard to the eligibility for Parliament. Such a restriction would require an amendment to the Constitution - an amendment I doubt many politicians (in Germany or elsewhere) would support.

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36 At the end of the second term of the then President Theodor Heuss, who was a highly esteemed personality, a discussion arose whether art 54(2) should be amended in order to enable Heuss to be re-elected for a second consecutive time. Heuss himself rejected this idea with the argument that a constitution should never be amended *ad personam*.