



**Federal President Frank-Walter Steinmeier
during his inaugural visit to the
Federal Constitutional Court
in Karlsruhe
on 21 June 2017**

A couple of years ago, I read an article in the Frankfurter Allgemeine newspaper that I found quite wonderful – “Wertschätzender Umgang unter Verfassungsorganen” – about mutual respect among the constitutional institutions. I am here to tell you that I intend to play my part in making that an accurate summary of our work together over the next few years. I for one am convinced that what Günter Bannas was referring to in his article, perhaps even a touch sarcastically, is certainly relevant to a key element of our constitutional life. The Basic Law establishes a system of mutual moderation and scrutiny to keep conflicts between political players orderly or, where necessary, to bring them into line. Yes, we know that conflict is not the norm in our political and constitutional life.

But the Basic Law cannot assume that there won't be exceptions to the norm. Being aware of the inherent tensions between a democracy's institutions and, perhaps more significantly, having really learned the hard way, the authors of the Basic Law built it around safeguards for the rule of law. The most powerful of those is the Federal Constitutional Court, and not only when it comes to disagreements between the constitutional institutions themselves. It also enables private citizens to scrutinise state action for compliance with the constitution – which is not something that even the democratic states of Europe can all boast. But beyond that institutional safeguard, our Basic Law – I am convinced – expects the constitutional institutions not to deliberately counteract one another but to work together for the common good.

Now, mutual respect is significantly shaped by convention and rules, and I suspect that among the unwritten rules is one which says the Federal President should visit the Federal Constitutional Court regularly and as soon as possible after his inauguration. I can now tell

you that this has been managed, before the end of my first hundred days in office. I am therefore very glad to be here today, and I am delighted to have received such a warm welcome from you, President Voßkuhle, and many of your fellow judges – the majority of whom, going by their average age, I probably didn't meet during my years at the university; but I have of course seen and enjoyed discussions with one or two of you when the Court and the Federal Government have met up in the past. And I am of course also here because I know how particularly vital the Federal Constitutional Court is to our judicial culture and to our people's sense of justice; it is the guiding force behind our country's constitutional development. And, as I can attest from my experience in previous positions, its significance extends far beyond our own borders.

As you know, before I took office as Federal President, I saw quite a bit of the world. On all those travels, I was asked more than once what actually makes the rule of law work so well in Germany. The question seems simple, but the answer is not that straightforward.

The law is first and foremost an acquisition and a cultural achievement. But we need only look around the world to see that it has not been quite so fully achieved elsewhere. So what is it that actually makes the rule of law so attractive?

I think the law primarily allows us to rely on certain expectations. Legal norms shape the way we live in our society – indeed, they govern people's behaviour. And respect for legal norms prevents something which is particular key to our coexistence with others: the law gives us security even in the private sphere, so that we don't become powerless objects of institutions or another individual's tyranny. This is particularly true of constitutional provisions, as they give us the certainty that tomorrow is not going to see our freedom restricted, people forbidden to express themselves or others punished for, say, belonging to a different faith. And anyone who breaks the rules – and that means anyone – will have to face the consequences.

The foundation of this is loyalty to and respect for the law, meaning willingness to actually obey the rules. That law-abiding behaviour runs through our entire society, from private contracts to relations between each private citizen and the state – and of course the relations of state actors with one another. People's basic trust is bolstered by the knowledge that they can appeal for justice to independent state courts – that is, to institutions which, since they are independent of political influence, can make their decisions with reference to the law alone. And the system enshrining that rule of law is made complete by the very fact that the Federal Constitutional Court not only settles conflicts between the constitutional institutions but above all gives private citizens a way to defend their fundamental rights. Fundamental rights are therefore more than mere words on

paper; they can be claimed in reality. You can claim your fundamental rights.

With that in mind, Mr President, we might wonder whether that is actually what underpins the success and the image of the Federal Constitutional Court. Statistically, establishing that the state is doing something unconstitutional, i.e. in contravention of fundamental rights, is very much the exception rather than your day-to-day work. The crucial thing, I believe, is something else –namely that the legislature and the government know that the Federal Constitutional Court does not shy away from decisions with unpleasant and sometimes far-reaching consequences. Wherever you see undesirable developments which need to be corrected, you draw very clear lines. You have often done so over the years. The world of politics most recently felt the effects when you issued your decision on the Nuclear Fuel Tax Act.

At the same time, you have repeatedly underlined the rights of the parliament vis-à-vis the government and re-established the balance between the legislature and the executive under ever-changing governments and practical political circumstances. And in making your decisions, on information obligations in relation to the European Stability Mechanism or arms-export licences, for example, you have reinforced democracy itself. You have shown the government that skimping on democracy will prove too costly in the end. The result is that the very existence of the court ultimately acts as a kind of constitutional preventative measure, leading the constitutional institutions to see the Basic Law not only as a mere guideline for political action but to take the substance and the restrictions of that constitution seriously as determining the potential scope of political action. The Federal Constitutional Court's success therefore lies not in declaring as many laws, decisions and state actions as possible to be unconstitutional. On the contrary, its existence and its corrective potential ensure that state order in Germany overwhelmingly works in accordance with the provisions of our constitution.

We just spoke about opposition faced by the Federal Constitutional Court. The court has experienced criticism time and again. But that has made no dent in its popularity and the levels of trust you enjoy among the people. And you have withstood the criticism every time, always knowing just how to deal with it appropriately and confidently, not least in public.

The rule of law, the independence of the judiciary, judicial and constitutional oversight of state action – oversight to which the legislature itself is subject – these are achievements that characterise our constitutional system and contribute in a very special way to its stability. They are in fact absolutely indispensable, since they constitute – as I see it – the very essence of the liberal state governed by the rule of law. It is therefore hardly surprising the independence of

the courts is always one of the first things to be restricted by dictatorial or authoritarian regimes, as they pervert the standards of due process to suit their own despotic systems and replace independent officials with more or less compliant alternatives. Institutional safeguards alone are not enough. The vital thing – and this is very important to me – is for the people and above all the officials to be vigilant about the rule of law. Every woman and every man, in whatever position they happen to occupy, has to stand up for what is right. And we know from our own history just how little that can be taken for granted.

Regrettably, we have recently been seeing just how important an independent judiciary really is in that context, and how keenly authoritarian regimes strive to disable that judicial oversight as quickly as possible. And we have not had to look beyond the EU to see it. It goes against our western values and legal culture to place the wrong kind of emphasise on democratic majorities in an attempt to bulldoze the safeguards of a liberal state governed by the rule of law. Some are describing what we are seeing as “democratic hypertrophy” – when key elements of the rule of law are supplanted by the argument that an electoral majority has been achieved and the government has the people’s backing. I am not sure whether “hypertrophy” is really the right word. In practice, this policy tends to be accompanied by various methods of creating unfair advantages and politically motivated sackings, which makes me think of it as more than simply hypertrophy. The fact is that western liberal democracy – the foundation of Europe’s legal cultures and arguably a shared European achievement – means not only the separation of powers and the rule of law but also the protection of minorities, respect for fundamental rights and the independence of the courts. If we do not have these things, if we give them up, then we leave behind the realm of that common legal culture.

President Voßkuhle, Vice-President Kirchhof, Justices of the court – I know that you find this development in some parts of Europe just as worrying and unsettling as I do. I too am deeply concerned at this development, and I am glad to see you using your place among the constitutional courts of Europe to advocate enhancing the independence of the judiciary. I can only beg you to keep up the good work. Rest assured that you have the Federal President on your side in these endeavours.

This is just a small selection of the issues we will be dealing with together today and in the coming years. And though there is no need to be alarmist – which my eastern Westphalian nature forbids anyway – we should nonetheless be alert and vigilant. The achievements of our liberal societies and states are not to be taken for granted. They are being questioned, and in other parts of Europe they are facing real challenges. We therefore have to persistently promote them and, where necessary, defend them too.

I am very interested to hear what you all think about these issues, and I look forward to the exchange of views which we are going to have. I am really curious to hear what you have to say.

Let me reiterate how grateful my wife and I are for the warm welcome we have received here. It is both a pleasure and, I can assure you, an expression of my convictions to be here.

Thank you very much!