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## On the Occasion of the 100<sup>th</sup> Anniversary of the Latvian Constitution – a Brief Overview of the *Weimarer Reichsverfassung* as an “Elder Sister”

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In 2022, the Constitution of Latvia celebrates its 100<sup>th</sup> anniversary. With regard to the influence of the development of constitutions in other European states in the first decades of the 20<sup>th</sup> century, the contribution will provide an overview of the Weimar Imperial Constitution (hereinafter – *Weimarer Reichsverfassung*, WRV). Despite continuous criticism in the decades following the Second World War, it has had an immense impact and influence on the *German Grundgesetz* (Basic Law) and, on the occasion of its 100<sup>th</sup> anniversary in 2019 has gained increased attention.

Particularly in troubled times where constitutions are under constrain, a look at Weimar times may indicate risks and challenges of a constitution but also provide inspiration for potential safeguards.

**Keywords:** Constitution, Weimar Republic, *Weimarer Verfassung*, *Grundgesetz* / Basic Law

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## Introduction. 100 years and more: Inspiration from the birth of democratic constitutions in Europe

In 2022, the Constitution of Latvia celebrates its 100<sup>th</sup> anniversary. Three years earlier, in 2019 Germany celebrated the anniversaries of two constitutions: The Basic Law (*Grundgesetz*, GG), which entered into force on 23 May 1949, and the Weimar Imperial Constitution (*Weimarer Reichsverfassung*, WRV), which entered into force on 14 August 1919. These two German constitutions did not follow one another unrelatedly. Rather, the *Weimarer Reichsverfassung* is referred to as a “journeyman’s piece” and the GG as a “masterpiece”.<sup>1</sup> According to Article 140 GG, some provisions of the WRV even became part of the GG. Other provisions, e.g., Article 33 (5) GG provide some continuity between the constitutions by requiring that “[...] the law governing the public service shall be regulated and developed with due regard to the traditional principles of the professional civil service [...]”. These principles are those that “were recognised and upheld as binding at least under the Weimar Constitution”.<sup>2</sup> In other places, for instance, regarding the powers of the *Bundespräsident* (president) and the Constitutional Court, the addressees of the fundamental rights or the possibility of amending the constitution – the GG deliberately differs from the WRV. However, it is not only for these reasons that the GG can only be properly understood if one knows the WRV.<sup>3</sup> It has frequently been claimed that the GG had served as a model during the constitutionalisation of some Eastern European states after 1990, and has even been described as an “export hit”.<sup>4</sup> Accordingly, given the WRVs considerable impact on the GG, it is also worth taking a look at the origins of democratic constitutionalism in Germany from an Eastern European perspective. Furthermore, the WRV finally failed because of a number of very different factors and problems internally, as well as externally. This also raises the question, how much pressure a democratic constitution may stand, and how far it may be secured against the variety of menaces.

Hence, this contribution will firstly provide an overview of the genesis of the WRV and its historical background (1.1). Hereafter, it will introduce its principles and institutions (1.2), before turning to a retrospective evaluation of the perceived deficiencies and the merits of the constitution (1.3), with a brief comment on the lessons that might be learned from the WRV, particularly regarding potentially difficult times. The final part will bring these aspects together in a conclusion.

### 1. The WRV – genesis, structure and impact on the Grundgesetz (GG)

To a considerable extent, the WRV may be seen as the result of German history, as it is marked by important events, as well as it reflects important philosophic and political ideas of the 19<sup>th</sup> and the early 20<sup>th</sup> century. Similarly, the historic setting may also be considered as the reason for the failure of the Weimar Republic. Accordingly,

<sup>1</sup> Von Lewinski, K. *Weimarer Reichsverfassung und Grundgesetz als Gesellen- und Meisterstück*. Juristische Schulung, Nr. 6, 2009, p. 505.

<sup>2</sup> BVerfG, Beschluss des Zweiten Senats vom 14. Januar 2020 - 2 BvR 2055/16 -, Rn. 29. Available: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/01/rs20200114\\_2bvr205516.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/01/rs20200114_2bvr205516.html) [last viewed 10.05.2022].

<sup>3</sup> Waldhoff, C. „Weimar“ als Argument. Die Weimarer Reichsverfassung als Vorbild und als Gegenbild für das Grundgesetz. Juristische Schulung, Nr. 8, 2019, p. 737.

<sup>4</sup> Schwabe, J. *Verfassungsrecht und Verfassungspraxis. Eine Nachlese zu den Würdigungen des Grundgesetzes anlässlich seines 50jährigen Bestehens*. Neue Juristische Wochenschrift, Nr. 49, 1999, p. 3616.

it is indispensable to provide an overview of the historic landmarks and highlight their impact on the constitutional process.

### 1.1. Historical background

Before founding the German national state in 1871, a constitution after the Revolution in 1848/1849 had been drafted but never came into force. Notwithstanding, this *Frankfurter Paulskirchenverfassung* (FRV), which comprised a catalogue of fundamental rights, provided some inspiration to the drafting of later constitutions. The *Reichsverfassung* of 1871 (RV) only partially adopted the ideas of the failed revolution and provided for a constitutional monarchy without granting fundamental rights. However, constitutions of the *Länder* had catalogues of fundamental rights. This was of higher importance, because administrative powers lay with the *Länder*<sup>5</sup> and, according to the view at the time, fundamental rights should only bind the administration.<sup>6</sup>

The end of the RV became apparent when it became obvious that the German Reich would be defeated in the First World War and the German Kaiser (Emperor) Wilhelm II abdicated on 9 November 1918. In Berlin, the November Revolution was followed by civil war-like conditions over the question of how the German nation state should be oriented in the future.

On 19 January 1919, a National Assembly was elected, which met in the National Theatre in Weimar and elaborated a new constitution. According to some authors, this place had been chosen in order to symbolically foster the cohesion of north and south, and thus the unity of the Republic<sup>7</sup>, while others state that this choice aimed at avoiding the risks of the street fighting in Berlin<sup>8</sup>. This fact, however, explains why “The Constitution of the German Reich” of 11 August 1919 (it came into force on 14 August 1919) is called the “Weimar Reich Constitution” (WRV). The State Secretary in the Reich Office of the Interior, Hugo Preuß, had already drafted a constitution for the *Reich* beforehand, which was submitted to the National Assembly on 3 February 1919 after modifications by experts, by the Reich government and by the governments of the *Länder*.<sup>9</sup> Later, the requirements of the Versailles Peace Treaty, which Germany ratified on 28 June 1919, had to be considered. Among other things, it was agreed in this treaty that Germany had to surrender and that it was solely responsible for all losses and damages of the war. Furthermore, it had to cede more than a tenth of its national territory, lost a tenth of its population<sup>10</sup> and, in addition, had to pay considerable reparations to the victorious powers and was only allowed to maintain weak armed forces.

### 1.2. The Weimar Imperial Constitution – an overview

The WRV consists of two main parts, “Structure and Tasks of the Reich” and “Fundamental Rights and Duties of the Germans”.

<sup>5</sup> See below 1.2.1. aa) 1.

<sup>6</sup> Stern, K. Das Staatsrecht der Bundesrepublik Deutschland, Band V: Die geschichtlichen Grundlagen des Deutschen Staatsrechts, 2000, p. 362.

<sup>7</sup> Austermann, P. Der Weimarer Reichstag, 2020, p. 16 with further references.

<sup>8</sup> Ibid., providing references; Grevelhörster, L. Kleine Geschichte der Weimarer Republik, 2010, p. 34.

<sup>9</sup> Gusy, C. „Das Deutsche Reich ist eine Republik“ – Die Weimarer Reichsverfassung nach 100 Jahren. Juristische Arbeitsblätter, Nr. 8, 2019, p. 562.

<sup>10</sup> Stern, K. Das Staatsrecht der Bundesrepublik Deutschland, p. 532.

### 1.2.1. Principles and institutions

The first main part of the WRV regulates the organisation of the state under the heading “Structure and Tasks of the Reich”.

#### aa) Constitutional Principles

The Reich was founded on the Constitutional Principles of a Federal State, Democracy, Republic (see below, “President”), Rule of Law and a welfare state (see below, “Fundamental rights”).

##### (1) Federal State

In the German tradition, Article 2 (1) and Article 5 WRV provided for a federal state (also in the RV and the GG). This federal state initially consisted of 24 *Länder*, which were later merged into 17 *Länder*.<sup>11</sup> Prussia accounted for about two thirds of the population and of the Reichs-territory. In this respect, there is talk of a “dualism between the Reich and Prussia”<sup>12</sup>. Article 17 WRV (similar to today’s Article 28 GG) also required a liberal democratic constitution in the *Länder* (for which this passage is named “homogeneity clause”). The *Länder* could participate in the legislation and administration of the Reich through the *Reichsrat*.

##### (2) Democracy

The WRV decided against the proposal of the socialists, the installation of a “Räte-Republic” (a proposal similar to Soviet Socialist Republic)<sup>13</sup> and in favour of a representative parliamentary democracy, however, without using the word “democracy”. Rather, as stipulated in Article 1 p. 2 WRV, all state power emanated from the people, which thus in principle corresponded to a parliamentary democracy. Thus, the members of parliament in the Reich (Article 22 WRV) and in the *Länder* (Article 17 WRV) were elected directly. According to Article 21 WRV, the deputies were representatives of the whole people. They were subject only to their conscience and were not bound by orders. Since the Reich President (Article 41 WRV) was also elected directly by the people and could thus invoke the same source of legitimacy, the people, as the Reichstag, existential tensions arose between these constitutional bodies, especially in times of crisis.<sup>14</sup> Elements of direct democracy were found in the legislative process: the people could vote on laws passed by the Reichstag (Article 73 (1), (2) and (3), Article 74 (3) WRV) or introduced there (Article 73 (3) WRV) if the majority of those entitled to vote took part in the vote (Article 75 WRV).

##### (3) Rule of Law

The WRV opted for the rule of law. It is true that the term “rule of law” is not explicitly used in the constitution. However, central elements were standardized, such as protection by independent courts (Article 102 WRV) or state liability (Article 131 WRV). Other central elements, such as the legality of administration and the separation of powers, were determined by jurisprudence through interpretation.<sup>15</sup> Admittedly, the WRV provided few formal safeguards for these elements.

#### bb) Institutions

The WRV provided for five institutions, the Reichstag (1), the Reichsrat (2) the Reich Government (3), the Reichspräsident (4) and finally, a State Court (5).

<sup>11</sup> Waldhoff, C. „Weimar“ als Argument, p. 742.

<sup>12</sup> Stern, K. Das Staatsrecht der Bundesrepublik Deutschland, p. 585.

<sup>13</sup> Thiele, A. Der konstituierte Staat, 2021 p. 303.

<sup>14</sup> Stern, K. Das Staatsrecht der Bundesrepublik Deutschland, p. 570.

<sup>15</sup> Grzeszick, B. Art. 20 Bundesstaatliche Verfassung; Widerstandsrecht, VII. Art. 20 und die allgemeine Rechtsstaatlichkeit. In: Dürig, G., Herzog, R., Scholz, R. Grundgesetz-Kommentar, p. 14.

## (1) Reichstag

According to Article 22 WRV, the Reichstag as a parliament was elected by universal, equal, direct and secret suffrage by men and women over the age of twenty according to the principles of proportional representation. In contrast, England, the United States of America and France had a pure majority voting system. The Reichstag had the central task of legislating (Article 68 WRV). According to Article 76 para. 1, sentence 2 WRV, amendments to the Constitution required that two-thirds of the legal number of members be present and that at least two-thirds of those present vote in favour. Further tasks were, the participation in foreign affairs and supervision of the Reich Government (Article 54 WRV) and the Reich President (Article 43 para. 2, Article 48 para. 3 WRV).

## (2) Reichsrat

The Reichsrat consisted of members of the governments of the *Länder*. The Reichsrat had the right to initiate legislation (Article 69 para. 2 WRV) and, according to Article 76 para. 2 WRV, could request a referendum on resolutions amending the Constitution. Furthermore, the Reichsrat could object to laws passed by the Reichstag (Article 74 WRV).

## (3) Reich Government

According to Article 52 WRV, the Reich Government was composed of the Reich Chancellor and the Reich Ministers, who were appointed and discharged by the Reich President (Article 53 WRV). The Reichstag as the parliament was thus not involved in forming the government. Rather, the Reich President had considerable leeway in deciding whom to appoint as Reich Chancellor.<sup>16</sup> As stipulated in Article 54, 2<sup>nd</sup> sent. WRV, each of them had to resign if the Reichstag withdrew its confidence by express resolution. Therefore, the Reich Government was dependent on the confidence of the Reich President and the Reichstag. Within the Reich government, the Reich Chancellor determined the policy guidelines in accordance with Article 56 WRV. Within these guidelines, each Reich minister managed the area of responsibility entrusted to him independently and under his own responsibility to the Reichstag.

(4) *Reichspräsident* (Reich President)

After succeeding an over 1000-year period of monarchies on this territory, Germany became a republic (Article 1, 1<sup>st</sup> sent. WRV). Under the new system, the Reich President became the head of state. The Reich President was directly elected by the people (Article 41 WRV) for a term of seven years (Article 43 para. 1 WRV) and a second term was explicitly admitted by this norm (Article 43 para. 2 WRV). In terms of power politics, it is worth noticing that, apart some representative duties, the *Reichspräsident* held the supreme command over the entire armed forces of the Reich (Article 47 WRV) and the power to take measures in the event of disturbance of security and order (Article 48 WRV). In addition, the Reich President could dissolve the Reichstag (Article 25 (1) WRV), though not repetitively for the exact same reason. In total, the Reich President made eight times use of this option.

## (5) State Court

The State Court (Article 108 WRV) only held the competence to decide in few areas: According to Article 19 WRV, it ruled on constitutional disputes within a *Land* where there was no court to settle them, as well as on disputes of a non-private law nature between different *Länder* or between the Reich and a *Land*. The Constitutional

<sup>16</sup> Stern, K. Das Staatsrecht der Bundesrepublik Deutschland, p. 573.

Court therefore did not have the competence to adjudicate on constitutional complaints (however, see § 126 lit. g) FRV), applications for the review of norms or on disputes between organs of the Reich.

### 1.2.2. Fundamental Rights and Duties of the Germans

The Second Principal Part of the WRV regulated fundamental rights and obligations of Germans (Article 109 ff. WRV).

#### (1) Fundamental rights

Article 109 ff. WRV introduced a structure of five fields, i.e. in “The Individual”, “Community Life”, “Religion and Religious Societies”, “Education and School”, and “Economic Life”. With this “value-based character”, the WRV went beyond a mere organizational constitution.<sup>17</sup>

Firstly, rights of equality were standardised, followed by liberal rights of freedom. However, from today’s perspective, one notes the absence of the fundamental rights to life and health. Similarly, there was no provision that – comparably to Article 2 (1) GG – would generally safeguard freedom of action in matters other than those explicitly enumerated. However, the WRV even comprised social rights and some rather programmatic sentences, which were considered as quite progressive, such as Article 151 para. 1 sentence 1 WRV, which stipulated: “The order of economic life must conform to the principles of justice with the aim of guaranteeing an existence in dignity for al”<sup>18</sup>.

However, it remained controversial whether fundamental rights should be binding legal principles or non-binding programme sentences. State powers were not explicitly bound by the WRV, and it is particularly worth noticing that the legislative was not formally bound to fundamental rights (in contrast to § 130 FRV, which was never enacted).<sup>19</sup> However, there is one exception, as it is commonly agreed, that the executive was bound by fundamental rights. Moreover, in the case of freedom of opinion, for example, there is a direct third-party effect (Article 118 (1) sentence 2 WRV).

#### (2) Fundamental duties

The Second Principal Part of the WRV also regulated the fundamental duties of Germans. These included the duty of parents to bring up their offspring (Article 120 WRV), the duty to undertake voluntary work (Article 132 WRV), the duty to pay taxes (Article 134 WRV), the general duty to attend school (Article 145 WRV), the duty of landowners to cultivate and exploit the soil (Article 155 para. 3 WRV) and the moral duty to exert one’s mental and physical powers as the welfare of the whole requires (Article 163 para. 1 WRV). Overall, however, it remained unclear whether these were legal duties or only moral duties.<sup>20</sup> The duty to perform personal service

<sup>17</sup> *Stern*, K. Das Staatsrecht der Bundesrepublik Deutschland, p. 562.

<sup>18</sup> Other examples: Article 155 para. 1 WRV: “The distribution and use of land shall be supervised by the state in such a way as to prevent abuse and to secure for every German a healthy dwelling and for all German families, especially those with many children, a dwelling and economic home suited to their needs” and Article 163 para. 2 WRV: “Every German shall be given the opportunity to earn his livelihood through economic work. Insofar as it cannot be proven that there is adequate employment available, his necessary maintenance shall be provided for.”)

<sup>19</sup> *Stern*, K. Das Staatsrecht der Bundesrepublik Deutschland, p. 660 ff.

<sup>20</sup> *Ibid.*, p. 653.

for the state and the community (Article 133 para. 1 WRV) and compulsory military service (Article 133 para. 2 WRV) were subject to specific laws<sup>21</sup>.

### 1.3. The further development of WRV and its end

As noted above, the few procedures that attributed the State Court with the competence to adjudicate on constitutional matters, it was primarily left to the courts to apply and interpret the WRV.<sup>22</sup> Within jurisprudence, a dispute over method and direction soon arose between the so-called positivists and the so-called anti-positivists: According to the positivists, the origin, enforcement and effectiveness of legal norms was determined solely by the law established and recognised by the state.<sup>23</sup> In contrast, the so called antipositivists claimed, that the law also required extra-legal sources of knowledge to which the applicable law was subordinated or from which it was derived.<sup>24</sup>

Apart from these “internal” struggles among German scholars and lawyers,<sup>25</sup> the WRV was confronted with the various and massive external challenges. The political and societal setting and frame of the WRV was marked by political and economic crises, especially at the beginning and at the end of the Weimar period. In the early years, civil war-like conditions prevailed. Attempts to overthrow the government occurred in particular in 1920 (“Kapp-Lüttwitz Putsch”) and 1923 (“Hitler Putsch”). In addition, there were political assassinations (among others against the communists Rosa Luxemburg, Karl Liebknecht and Leo Jogiches, the Bavarian Prime Minister Kurt Eisner, the USPD chairman Hugo Haase, the Reich Minister of Finance Matthias Erzberger and Reich Foreign Minister Walther Rathenau). The economic crisis culminated in the galloping inflation of 1923. In the parliamentary system of government, it had not been possible since 1920 to select Reich Chancellors who were backed by a parliamentary majority.<sup>26</sup> Thus the Reich President gained not only a purely formal but also a substantive right to appoint the Reich Chancellor. As a result, in 14 years there were 20 different governments.

The last years of the “Weimar Republic” began with the world economic crisis of 1929, which culminated in mass unemployment. Later, right-wing and left-wing extremists emerged strengthened from this economic hardship. Hence, democrats were unable to obtain parliamentary majorities. In this situation, Reich President Paul von Hindenburg issued emergency decrees under Article 48 WRV, by extensively interpreting the constituent elements (“disturbance of public safety and order”). All in all, for about nine years the Weimar Republic was almost exclusively governed under the regime of Article 48 WRV, since use was also made of it in the early years.<sup>27</sup> After the National Socialist German Workers’ Party (NSDAP) received over 37% of the votes in the 1932 Reichstag elections, Hindenburg appointed Adolf Hitler as Reich Chancellor on 30 January 1933. The “Reichstag Fire Decree” of 28 February 1933

<sup>21</sup> Gesetz über die Abschaffung der allgemeinen Wehrpflicht of 21. August 1920 (RGBl. p.1041) and the Treaty of Versailles of 28. June 1919 (RGBl. p. 687).

<sup>22</sup> Gusy, C. „Das Deutsche Reich ist eine Republik“, p. 563.

<sup>23</sup> Kelsen, H. Reine Rechtslehre, 1934.

<sup>24</sup> Schmitt, C. Verfassungslehre, 1928; Smend, R. Verfassung und Verfassungsrecht, 1928.

<sup>25</sup> Though in a modified guise, the same question is still relevant when it comes to the *rule of law*, see: Schewe, C., Blome, T. “The Rule of Law Mechanism” and the Hungarian and Polish Resistance: European Law Against National Identity? *Juridiskā zinātne / Law, No. 14, 2021*, pp. 49–67, <https://doi.org/10.22364/jull.14.03>.

<sup>26</sup> Gusy, C. „Das Deutsche Reich ist eine Republik“, p. 565.

<sup>27</sup> Stern, K. Das Staatsrecht der Bundesrepublik Deutschland, p. 599.

suspended fundamental rights. On 23 March 1933, the Reichstag and the Reichsrat passed the “Law for the Rectification of the Distress of the People and the Reich” (“Enabling Act”), which allowed the Reich government to pass formal laws (including laws amending the constitution).<sup>28</sup> At this point at the latest, the WRV no longer had any effect, even if it was not formally repealed by the National Socialists.<sup>29</sup>

## 2. Retrospect on the WRV and its effect on the GG – anything to learn from German constitutional history?

The previous part has identified aspects of the constitution, which have been considered as progressive.<sup>30</sup> These are, in particular, the following elements: The WRV granted fundamental rights, it even addressed fair working conditions, minimum social standards, protection of common goods; it granted voting rights for women, elements of direct democracy, (initially) a relatively efficient parliament,<sup>31</sup> a president replacing the monarch and finally, it also foresaw means which may be described as measures of resilience. In fact, the WRV provided means to defend its principles, such as e.g. the possibility to ban political parties, which occurred 41 times. Apparently, as the short life-span of the constitution indicates, these instruments were not sufficient to defend it against the various attacks.

However, this contribution has pointed out that aspects of the constitution were criticised for having contributed to the failure of the WRV. This was, firstly, that the democracy *had been created from above* in the sense that it was a “democracy under democrats”.<sup>32</sup> Furthermore, the strong position of the president is considered to have been one of the constitutions’ flaws, as it enabled him by means of Article 48 WRV to govern the state without a meaningful parliamentary control or being limited by other review mechanisms. Thirdly, the liberal fundamental rights did not bind the legislator who, accordingly, could almost arbitrarily limit freedoms of citizens. Finally, there was no constitutional court entrusted with competences to protect the rights of citizens.

This leads to the question whether there were lessons to be learned. Some critics had linked the failure of the WRV to the constitution itself<sup>33</sup>, and thus it was claimed that the GG had not only explicitly and consciously rejected the injustice of National Socialism, which historically was a central concern of all forces involved in the creation and enactment of the GG,<sup>34</sup> but also learned from the deficiencies of the WRV. This contrast to the WRV can for instance be observed in the position of

<sup>28</sup> Zur Unvereinbarkeit des „Ermächtigungsgesetzes“ mit der WRV *Bickenbach, C.* Vor 75 Jahren: Die Entmündigung der Weimarer Reichsverfassung durch das Ermächtigungsgesetz. *Juristische Schulung*, Nr. 3, 2008, p. 199.

<sup>29</sup> On the development of the WRV during National Socialism: *Von Lewinski, K.* Weimarer Reichsverfassung und Grundgesetz als Gesellen- und Meisterstück. *Juristische Schulung*, Nr. 6, 2009, p. 510.

<sup>30</sup> *Gusy, C.* „Das Deutsche Reich ist eine Republik“, p. 562 f.

<sup>31</sup> *Austermann, P.* Der Weimarer Reichstag, 2020, p. 267.

<sup>32</sup> *Eichenhofer, E.* (ed.). 80 Jahre Weimarer Reichsverfassung – Was ist geblieben?, Tübingen 1999, p. XIV.

<sup>33</sup> *Roellecke, G.* Konstruktionsfehler der Weimarer Verfassung, in: *Der Staat* 35/1996, pp. 599–613.

<sup>34</sup> BVerfG, Beschluss des Ersten Senats vom 04. November 2009 – 1 BvR 2150/08 –, Rn. 65. Available: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2009/11/rs20091104\\_1bvr215008.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2009/11/rs20091104_1bvr215008.html); in English: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/11/rs20091104\\_1bvr215008en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/11/rs20091104_1bvr215008en.html);jsessionid=9A4723C7F3907C3DDC A238055727BFD3.2\_cid329 [last viewed 10.05.2022].



the president (*Bundespräsident*), which has been considerably weakened.<sup>35</sup> Secondly, the new Republic was organised in a federal system, which factually weakened the power of the government and made radical decisions less probable. Thirdly, in 1951 the *Bundesverfassungsgericht* (BVerfG) was created, i.e., a constitutional court, whose competencies were considerably enhanced compared to the Weimar State Court. Fourthly, Article 79 (3) GG guarantees the existence of the main principles of the constitution. Finally, Article 67 GG stipulates that “The Bundestag may express its lack of confidence in the Federal Chancellor only by electing a successor by the vote of a majority of its Members and requesting the Federal President to dismiss the Federal Chancellor.” This means that it is less easy to abrogate the government as it had twice been the case in the Weimar Republic.<sup>36</sup> Finally, the elements of resilience have been strengthened.

Notwithstanding, it is questionable whether the GG would have coped better with the extraordinarily difficult internal and external conditions of the Weimar Republic.<sup>37</sup> While the GG has enjoyed a long period of “good weather”, this was entirely different for the WRV, which was rather exposed to heavy storms.<sup>38</sup> Conversely, the WRV might presumably also have been successful under the much more favourable conditions of the Federal Republic’s history.

Furthermore, it is worthwhile to note that the WRV failed along with 14 other liberal-democratic attempts in the interwar period in Europe,<sup>39</sup> for reasons that are subject of historical research and which have been discussed elsewhere.<sup>40</sup> Acknowledging these very different conditions, criticism of the WRV today is more moderate than before. Accordingly, regarding the essence of the WRV, there seems to be consensus that it was a milestone in German and European constitutional history of the 20<sup>th</sup> century, which pointed far beyond its time and even presaged the developments leading up to the EU Charter of Fundamental Rights. However, it is also commented that it had been an overstretched constitution of an overstretched republic – in sum, a hapless, not a failed constitution.<sup>41</sup> Hence, the decisive factor is that the political forces within society need to respect the conditions of the principles and the framework set by the constitution.<sup>42</sup> This can be impressively illustrated by Article 48 WRV, which regulated the state of emergency: while the same norm was applied in 1923/1924 to *protect* the state order, it was applied from 1930 onward to *destroy* it.<sup>43</sup> In many other areas, too, state practice and jurisprudence approved an application of the WRV that ran counter to the aims of the architects of the constitution.<sup>44</sup>

<sup>35</sup> Pauly, W. Die Stellung der WRV in der deutschen Verfassungsgeschichte. In: *Eichenhofer, E.* (ed.). 80 Jahre Weimarer Reichsverfassung – Was ist geblieben?, Tübingen, 1999, p. 8.

<sup>36</sup> Extensively on this aspect, *Meyn, K. U.* Destruktives und konstruktives Mißtrauensvotum – von der schwachen Reichsregierung zum starken Bundeskanzler? In: *Eichenhofer, E.* (ed.). 80 Jahre Weimarer Reichsverfassung – Was ist geblieben?, Tübingen, 1999, p. 8.

<sup>37</sup> Vgl. das Experiment von *Steinbeis, M.* Ein Volkskanzler. Available: <https://verfassungsblog.de/ein-volkskanzler/> [last viewed 10.05.2022].

<sup>38</sup> Similarly, *Waldhoff, C.* „Weimar“ als Argument, p. 737, who uses the term, while the GG shines in the light of its success.

<sup>39</sup> *Gusy, C.* „Das Deutsche Reich ist eine Republik“, p. 561.

<sup>40</sup> Further references: *Stern, K.* Das Staatsrecht der Bundesrepublik Deutschland, p. 712.

<sup>41</sup> *Gusy, C.* „Das Deutsche Reich ist eine Republik“, p. 561.

<sup>42</sup> *Friesenhahn, E.* in *Erdmann, K. D./Schulze, H.* Weimar. Selbstpreisgabe einer Demokratie, 1980, p. 81.

<sup>43</sup> *Gusy, C.* „Das Deutsche Reich ist eine Republik“, p. 567.

<sup>44</sup> *Ibid.*, p. 564.

Accordingly, the failure of the WRV seems to illustrate that the question of whether a constitution may be considered as successful also depends on whether citizens identify with its basic values, institutions and procedures and accept an active role as citizens. While German commentators marked the term “constitutional patriotism”<sup>45</sup> for describing the success of the GG also regarding the perception in the German population, this cannot be said about the WRV, which may rather be characterised as a “constitution that was acquiesced with”<sup>46</sup>.

## Summary

The WRV was the first valid liberal democratic constitution in Germany. It has been progressive insofar as it granted not only fundamental but even social rights, it gave the voting rights for women and demonstrated elements of direct democracy. Many ideas were also adopted by today’s GG. Notwithstanding this positive assessment, it has also been criticised (among other things) because it could not prevent the national socialists from coming into power. However, whether the ascent of National Socialism could have been prevented by a different constitution is highly questionable. From today’s perspective, there seems to be a consensus that the WRV was a good constitution in bad times. Furthermore, it is a good example of the so called *Böckenförde-dilemma* (*Böckenförde-Diktum*), that “the free, secular state lives on preconditions that it cannot guarantee itself”<sup>47</sup>. This is an insight, which, in the recent years, seems to have regained increased relevance for the liberal European democracies.

## Sources

### Bibliography

1. *Bickenbach, C.* Vor 75 Jahren: Die Entmündigung der Weimarer Reichsverfassung durch das Ermächtigungsgesetz. *Juristische Schulung*, Nr. 3, 2008, pp. 199–203.
2. *Böckenförde, E.-W.* Säkularisation und Utopie. In: *Doehring, K.* (Hrsg.), Festgabe für Ernst Forsthoff zum 65. Geburtstag, Beck, München, 1967, pp. 75–99.
3. *Eichenhofer, E.* (ed.). 80 Jahre Weimarer Reichsverfassung – Was ist geblieben? Mohr Siebeck, Tübingen, 1999, p. 8.
4. *Friesenhahn, E.* In: *Erdmann, K. D., Schulze, H.* Weimar. Selbstpreisgabe einer Demokratie. Droste, Düsseldorf, 1980, pp. 81–102.
5. *Grzeszick, B.* Article 20. Bundesstaatliche Verfassung; Widerstandsrecht, VII. Art. 20 und die allgemeine Rechtsstaatlichkeit. In: *Dürig, G., Herzog, R., Scholz, R.* Grundgesetz-Kommentar, 2021.
6. *Gusy, C.* „Das Deutsche Reich ist eine Republik“ – Die Weimarer Reichsverfassung nach 100 Jahren. *Juristische Arbeitsblätter*, Nr. 8, 2019, pp. 561–568.
7. *Kelsen, H.* Reine Rechtslehre, Franz Deuticke, Wien, 1934.
8. *Müller, J.-W.* Verfassungspatriotismus, Suhrkamp, Berlin, 2010.
9. *Von Lewinski, K.* Weimarer Reichsverfassung und Grundgesetz als Gesellen- und Meisterstück. *Juristische Schulung*, Nr. 6, 2009, pp. 505–511.
10. *Roellecke, G.* Konstruktionsfehler der Weimarer Verfassung. In: *Der Staat* 35/1996, pp. 599–613.

<sup>45</sup> *Sternberger, D.* Unvergleichlich lebensvoll, aber stets gefährdet: Ist unsere Verfassung nicht demokratisch genug? In: *Frankfurter Allgemeine Zeitung* Nr. 22 vom 27. Januar 1970, p. 11; extensively: *Müller, J.-W.* Verfassungspatriotismus.

<sup>46</sup> *Winkler, H.A.* Weimar, 1918–1933, 1993, p. 99.

<sup>47</sup> *Böckenförde, E.-W.* Säkularisation und Utopie. In: *Doehring, K.* (Hrsg.), Festgabe für Ernst Forsthoff zum 65. Geburtstag, 1967, p. 75 (93).

11. *Schewe, C., Blome, T.* “The Rule of Law Mechanism” and the Hungarian and Polish Resistance: European Law Against National Identity? *Juridiskā zinātne / Law*, No. 14, 2021, pp. 49–67, <https://doi.org/10.22364/jull.14.03>.
12. *Schmitt, C.* *Verfassungslehre*. Berlin, Duncker & Humblot, 1928.
13. *Schwabe, J.* *Verfassungsrecht und Verfassungspraxis. Eine Nachlese zu den Würdigungen des Grundgesetzes anlässlich seines 50jährigen Bestehens*. *Neue Juristische Wochenschrift*, Nr. 49, 1999, pp. 3614–3616.
14. *Smend, R.* *Verfassung und Verfassungsrecht*, Berlin, Duncker & Humblot, 1928.
15. *Steinbeis, M.* Ein Volkskanzler *VerfBlog*. 09.09.2019 Available: <https://verfassungsblog.de/ein-volkskanzler/> [last viewed 10.05.2022].
16. *Stern, K.*, *Das Staatsrecht der Bundesrepublik Deutschland, Band V: Die geschichtlichen Grundlagen des Deutschen Staatsrechts*, C. H. Beck, München, 2000.
17. *Sternberger, D.* Unvergleichlich lebensvoll, aber stets gefährdet: Ist unsere Verfassung nicht demokratisch genug? In: *Frankfurter Allgemeine Zeitung* Nr. 22 vom 27. Januar 1970, p. 11.
18. *Thiele, A.* *Der konstituierte Staat*, Campus, Frankfurt/New York, 2021 p. 303.
19. *Waldhoff, C.* „Weimar“ als Argument. Die Weimarer Reichsverfassung als Vorbild und als Gegenbild für das Grundgesetz. *Juristische Schulung*, Nr. 8, 2019, pp. 737–744.
20. *Winkler, H. A.* *Weimar, 1918-1933*, C. H. Beck, München, 1993.

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