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## **The genesis of the German basic law and what it means to be a “Republic”**

### **I. Introduction**

It is a great honour for me to make a short contribution to this symposium here in this circle of dignitaries. I will give some remarks on the occasion we are commemorating today: the 60<sup>th</sup> birthday of the German constitution, which is called basic law.

My address on this occasion is a challenging task for me, because we are in Windhoek and the question might be asked: what particular message can be given here in southern Africa to commemorate this German day of importance. What could be the common interests of Germans and Namibians with regard to this anniversary?

There is a common factor: the anniversaries of both, the German and the Namibian constitution – with the one turning 60, the other one 20 years of age. Comparing the constitutions we find a specific common denominator - the two constitutional assemblies in Germany and in Namibia. We all know that the times of constitutional assemblies and of drafting constitutions are generally times, which stand out in history. 1948/49 Germany has just lost the terrible World War II and was in shame for the crimes of the Nazi regime. When Namibia gained its political independence in 1990 it marked the end of a long struggle. Such specific times pose challenges of special qualities: a nation has to decide what kind of political system it wants to establish. And Germany as well as Namibia found the same answer in one interesting respect: both countries desire to be a republic.

### **II. Republic – a forgotten and unknown principle**

The Namibian Constitution in art. 1 declares Namibia a republic as well as the German basic law in article 20 declares Germany to be a federal republic. But what does it mean: this very old, very famous, very popular, very traditional and very dignified term “republic”? Does it mean the same as state, democracy, rule of law or anything different? Or does it mean a specific quality of a state and its constitution? Is – finally – the constitutional provision that the state shall be a republic, a description of a fact or is this a declaration in any sense of normative value?

To ask such questions is rather uncommon – in Germany as well as in Namibia and in other countries all over the world. The reason for that is that the constitutional declaration of a state as a republic will be understood worldwide either as equivalent to the term state or as a refusal to monarchy. The general use of the term “republic” in Germany currently simply refers to the absence of a hereditary monarchy. Republic in this sense is therefore not a useful term of classification and indicates nothing relevant about the form of government. This can be demonstrated for example by classifying the United States of America and the Islamic Republic of Iran as republics and the United Kingdom and Saudi Arabia as monarchies although one member of each class has much more in common with a member of the other class – in respect of all significant criteria of classification. That means: the term republic used simply as the contrary to monarchy says nothing specific in a normative sense.

However, in 1948/49 the term “republic” included much more than only a name for the state. For the members of the constitutional assembly in Germany, republic was also more than the contrary to monarchy. It was regarded as term, which contained several more essential aspects and even specific demands on the citizens. Republic in this sense derives from a great and long political tradition, and the constitutional assembly in Germany tried to place the new German constitution in this long tradition. But what is this tradition of “republic” that the constitution refers to?

### **III. Republic as normative term**

A few considerations concerning the meaning of “republic” may be of interest. The word “republic” stems from the Latin *res publica*, which is composed of *res* - matter or thing, and *publicus* - referring to the people as a whole. Republic, *res publica* means the public, political matters. Cicero identified “republic” with the weal of the people and therefore said: *res publica res populi* - the public affairs must be the matter of the people.

For Cicero “people” do not mean any assemblage or mob, but an assemblage associated by a common acknowledgment of law, and by a community of interests. According to this classical definition by Cicero a monarchy could then also be a republic, if the king is recognized by the people and acts “as the first servant of his people”. The contrary to republic is therefore not monarchy, but despotism. In his work *De Re Publica* (On Republic) Cicero defines a republic therefore as the property of the whole people and as a partnership in justice. In the Virginia bill of rights from 1776 one finds for the first time in a modern constitution the material intent of what republic should be in the tradition of Cicero: „That no free government or the blessings of liberty can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue and by frequent recurrence to the fundamental principles” (Section 15).

#### IV. Characteristics of republic

The most important characteristics of this classical term of republic in the sense of Cicero are the following five:

##### *1) State under the rule of law*

"Without laws", Cicero reasoned, "there can be no state or government." There must be equality under the law with no special exceptions: the laws are binding upon all. This is essential for justice, which in turn is necessary for a successfully functioning government.

##### *2) Liberty and freedom to the people*

In *The Republic*, Cicero argued, that laws are not enough for a just state. There must also be liberty. "If liberty is not equally enjoyed by all the citizens", he declared, "it is not liberty at all." Therefore, liberty cannot exist unless "the people have the supreme power" in government.

##### *3) Mixed government: or separation of power*

Cicero proposed that the ideal government in a republic "is formed by an equal balancing and blending" of monarchy, democracy, and aristocracy. In this "mixed state" he argued, the best men and the common people, all should have their specific role in the republic: The political leader as form of a democratic king, the judges of the high courts as a form of democratic aristocrats and the people through the freely elected parliament.

##### *4) Acting only in the public interest*

There is a very important condition for a state to be a republic. The state, that means in fact all civil servants – the policeman as well as the judge, the minister as well as the president – have to act only in the public not in their private interest. Private interests are such of the individual, but also such of the families, of groups or parties. That means in general: private in this sense are all interests, which are not intending to benefit *all* citizens; and that includes the political enemy. I again remind you of Cicero: The republic must be the matter of all people. The duty of the civil servants to act only in the common interest of all, implies a great challenge for the individual officer: what he can do as a free man he cannot do as a civil servant. The reason for that is very simple: The office is not his own, not his property, but only entrusted to him as a representative of the people and for the public weal.

##### *5) Republican virtues*

Finally: all the institutional arrangements made for a successful republican constitution do not and cannot compensate for the most important requirement: the "republican virtues". A republic requires a particular kind of virtue, encompassing an intense patriotism and devotion to the service for the state, as well as a high standard of personal morality. This ethical background of "republican virtues" adds the specific quality to the term republic and indeed the idea of "republic". That means: to enjoy a republic we – the citizens of it – must work for it; day for day, year after year, all the time. Republic is the result of political efforts.

## **VI. The German basic law – a story of success**

Let me come to the end. 60 years ago, as the constitutional assembly in Germany debated the new constitution they did so with respect to this great republican tradition. Having accepted the validity of our constitution for 60 years one can state that this constitution in general has fulfilled all the republican expectations and hopes. More than that: the basic law is the effective basis of all political procedures and decisions in Germany; its legitimacy is accepted by the people throughout the times, even if the decisions are not very popular. As a result - no political party in Germany has been fighting against this constitution in the last 60 years.

In that respect and on the occasion of the anniversary of our constitution I may say today: we are all republicans. We try – everyone at his place – to give our best for the best of the res publica, the republic. So it can finally be stated: the basic law of Germany is a successful republican constitution! I wish that the 40 years younger constitution of Namibia will have the same success – and as far as I can see after just a few days in your beautiful country: you are on the right way.

Thank you for your attention.