

Memorial Address

by the President of the Federal Constitutional Court
Prof. Dr. Andreas Voßkuhle

on the occasion of the state memorial service
honouring the former Federal President
Prof. Dr. Roman Herzog

on 24 January 2017

Baroness von Berlichingen-Jagsthausen,
the Herzog family,
fellow mourners,

Does God have a plan? We do not know. Looking at the path of Roman Herzog's life, though, one notices that its different phases build upon one another and complement each other like the individual movements of a classical symphony. In retrospect, Roman Herzog's life appears like one whole work of art, the sum of which is greater than its parts! One thing he never wanted was to be artificial, aloof, cerebral. He was exceedingly bright but did not use this talent for intellectual games, and instead thought things through to the end, made them understandable and got them underway. Roman Herzog never lost touch. He loved clear words and wanted to make a difference for the common good. His unmistakable and self-deprecating sense of humour, which could at times turn into biting mockery, helped him in this regard, as did his realistic view of the world. Firmly anchored in the Christian faith, he saw the challenges and demands of life with tranquil humility and thereby also gave others strength and hope. His persona and his work are particularly well-known to me in two phases of his life, even though our personal encounters only took place much later: the first phase begins in the late 1950s in Munich with a position as a research assistant to Theodor Maunz at the Law Faculty of the Ludwig-Maximilians-Universität; the second in December 1983, with his appointment as Vice-President of the Federal Constitutional Court.

His academic career in constitutional law, in and of itself, would have sufficed for anyone to say that he had an exceptionally fulfilled and successful life. Soon after his *Habilitation* in 1964 with a thesis on "The Essential Elements of the Organisation of the State from a Legal and Historical Perspective", he was offered a professorship in constitutional law

and politics at Freie Universität Berlin. Shortly thereafter, in 1969, he took up a Chair for Constitutional Law and Politics at the State Academy of Administrative Sciences in Speyer. Right from the outset, he was particularly interested in the broad lines of the development of modern statehood and its legal organisation. He moved his research projects forward with decisiveness and focus, intellectual autonomy and incredible energy. At the age of 37, he published his highly regarded “Allgemeine Staatslehre”, an opus that usually only ever appears late in the life of a constitutional law professor. His wide-reaching and substantial commentary in the Maunz/Dürig annotated edition of the Basic Law, which he co-edited, has influenced and will continue to influence generations of constitutional jurists. The same applies to his contributions in the “Evangelisches Staatslexikon”, of which he was co-editor. Numerous other monographs and more articles than can be counted come together to constitute an impressive and lasting oeuvre. All his publications have in common a clear and gripping style, an acute sensitivity for historical correlations and the fragility of institutions, as well as an infallible sense for appropriate and practicable legal solutions.

Seen from today’s perspective, it seems only logical that – following another phase in life as a politician – the relevant parties involved agreed that Roman Herzog should succeed Wolfgang Zeidler, President of the Federal Constitutional Court. On 20 December 1983, he was first appointed Vice President and Chairperson of the First Senate, and, on 16 November 1987, he was appointed President. Although his time as Baden-Württemberg’s Minister of the Interior – during which he had spoken out in favour, among other things, of the use of rubber bullets and tear gas against protesters – had given him the reputation of being a “polarising hardliner”, he quickly proved to be an excellent choice for the Court and an independent and liberal thinker with great integrative power. He vehemently defended the Court from the ever-present external charge that it has taken on the role of a substitute legislature, while at the same time closing the ranks within the Court. Rolf Lamprecht, a journalist and chair of the Judicial Press Conference of Karlsruhe for many decades, upon looking back, observed: “Herzog brought his own distinctive style to the high office. He impressed with his charming Bavarian intellect. In him, the mental acuity of a scholar... and the instinct of a politician ... met with a conception of the law rarely found in Germany. For him, the fundamental notion of Law was pleasantly plain: it should be reasonable and understandable.” (Lamprecht, Ich gehe bis nach Karlsruhe – Eine Geschichte des

Bundesverfassungsgerichts, 2011, p. 200). Chaired by Roman Herzog, the First Senate rendered many landmark decisions. Among these are the “Brokdorf-Decision” on the fundamental right of freedom of assembly, in which the cooperative interaction between protesters and the police was established (BVerfGE 69, 315); as well as the decisions on the right to know one’s own parentage (BVerfGE 79, 256); the tax-free subsistence minimum (BVerfGE 82, 60); the inclusion of the novel “Josefine Mutzenbacher” on a list of harmful publications and the relationship between art and pornography (BVerfGE 83, 130); the status of public broadcasting (BVerfGE 83, 238); the difficult issue of “land reform” in the Soviet-occupied zone; a tenant’s protection by fundamental rights (BVerfGE 89, 1); the limitation of the freedom of contract in case of structurally unequal bargaining power – dealing with the case of a 21-year-old guarantor (BVerfGE 89, 214); and the punishability of the denial of the persecution of Jews (BVerfGE 90, 241). In many of these decisions, a core message of our Basic Law, which also guided Roman Herzog throughout his life, manifests itself: the individual person stands at the heart of the Constitution and of our legal order. All state authority must serve the individual.

Exceptional persons like Roman Herzog help make this aspiration reality. And for this we all owe him a great debt of gratitude. We will not forget him and will always honour his memory.

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