

**Speech by
State Secretary Angelika Schlunck at the
Weimar Triangle of Lawyers – 4th Open
Summit:
Legal Professionals in the Rule of Law –
Preventive and Restore Actions in Europe
on 8 October 2024 in Berlin**

Mr von Raumer, Mr Pietrzak,
Mrs Kindermann, Mr Mazur,
Ladies and gentlemen,

I am delighted to have the opportunity to share some introductory thoughts at this highly important event.

But first I would like to pass on the **best wishes of Justice Minister Buschmann**, who you had kindly invited to speak here today. Unfortunately, he is unable to attend and has asked me stand in for him.

As you are aware, the topic of today's event – **protecting and safeguarding the rule of law** – is very important to the Minister.

We very much appreciate that you are using the “Weimar Triangle” format to explore

- how the rule of law can be safeguarded in Europe and
- how the independence of the judiciary and the legal profession can be protected against a variety of threats.

I.

Three strong European countries are represented here today; **two of them** – **France and Poland** – with a long history of liberty and liberal constitutions.

Many Europeans might still not be sufficiently aware of the historical fact, that **Poland** is a pioneer of liberty in Europe.

This deserves a few brief words of praise – especially from a German perspective.

Poland has exhibited an admirable willingness and determination to fight for liberty time and again over the centuries, against threats both internal and external. “**For our freedom and yours!**” has figured prominently as a motto in history.

Early on, this Polish call for freedom was a blessing to Germany in particular. In the decades leading up to the **revolution of 1848**, there were **many thousands of Poles** who, having fled their divided country, **lent their support to the German quest for unity, liberty and democracy.**

Many Poles attended the **famous demonstration in Hambach in 1832** – a high point of German civil opposition in this pre-revolutionary period.

In the century of revolutions, Poles fought for liberty all over Europe – and even in the American War of Independence. In fact, **Poles have been deeply entwined in European freedom movements for two centuries.**

The victory of **Solidarnosc in June 1989**, in the first free elections since the Second World War, was a beacon of encouragement to the civil movement in the GDR.

Without the Polish freedom movement, my country's path to unification would have been inconceivable. We will never forget this either. At this point, our French colleagues might want to briefly cover their ears:

The **Polish constitution of 3 May 1791** was the **first modern constitution in Europe**, predating the first French constitution by exactly four months.

On the other hand, this constitution of 3 May owed much to the ideas of two **great French writers and political philosophers**, namely to **Rousseau's idea of popular sovereignty** and **Montesquieu's** ingenious and timeless concept of the **separation of powers**.

Together with France, Poland is one of the pioneers of European constitutional law and liberty.

I would like to emphasise how important this close European partnership between our three countries is to the German Federal Government. We will now also **continue this format at the level of the justice ministers**.

In addition to the topic you are discussing here today, this partnership once again has an urgent and important task: **Supporting Ukraine against a Russian aggressor that continues to disregard the law.**

The three Weimar Triangle states are among Ukraine's greatest **political, judicial, military** and **financial supporters** in the country's fight against the imperialist aggressor Russia.

We will continue to provide this support. **Because Putin must not win this war.**

This is the central issue of European security we face today.

II.

Ladies and gentlemen,

As we all know: **Liberty and law must be constantly defended anew in every country in Europe.** Today, all countries recognise the threats to the liberal order that can arise from within. Every country must resist the temptation to make life easier by diluting the sometimes uncomfortable separation of powers and mutual checks and balances.

The danger is always there: If limits are not imposed on the majority, democracies have the potential to self-destruct.

This is why, ever since the American, Polish and French constitutions were adopted in the 18th century, **liberal constitutions** have contained a robust **system of checks and balances**. This includes a strong, independent judiciary that can restrain any state action that violates the constitution and breaks the law.

That is what you are striving to safeguard – and what France, Poland and Germany must strive to safeguard.

We have seen how constitutional courts have come under pressure in recent years, with efforts to transform them from guardians of the constitution into tools to serve parliamentary majorities.

A whole host of tactics have been employed to attack the functioning and independence of constitutional courts: among them, for example, the idea of adding more Senates to the Constitutional Court on top of the existing ones – and then to fill these two new Senates with jurists who are politically affiliated with the ruling majority.

We have observed a similar strategy in **Hungary**.

In **Poland**, the retirement age for judges was lowered so that unwanted judges could be removed from office and replaced with those loyal to the government. Your first joint statement as the Weimar Triangle of Lawyers in January 2020 opposed this very development.

In Israel, we have all followed the debate on a judicial reform that would have weakened the constitutional court.

In Germany, now, we want to prevent such developments. As I am sure you are aware, **we are planning to make the Federal Constitutional Court more resilient.** We are not inventing any new rules or structures.

Instead, we want to take **key structural requirements** that are unanimously recognised as having proven their worth, and elevate them from simple statutory law **to constitutional status.**

In particular, I am talking about:

- the status of the court and the term of office of the Justices (12 years)
- the age limit for Justices (68)
- the number of Justices (16) and the number of Senates (2)
- the single-term rule
- the continuation of a Justice's official duties until the election of their successor
- the binding effect of the court's decisions and
- the court's right to establish its own rules of procedure.

I am sure you will talk about all of this in detail – after all, the **German Bar Association was and is such a key partner and driving force in these considerations.** For that, Mr von Raumer, I would like to express my heartfelt thanks on behalf of my Ministry!

We are all following the **efforts of the new Polish government** with great interest and empathy, in the hope that they will succeed in reinstating the rule of law without creating deep new divisions.

The situation demonstrates the **difficulty of restoring balance and mutual respect between politics and the law** when this delicate relationship has been systematically undermined.

That is precisely why the safeguards you are exploring in this forum are so important.

Minister Buschmann visited Adam Bodnar soon after his appointment and is grateful for the **positive and productive dialogue** they have had since then.

I myself have regular discussions with my Polish colleagues – and I can tell you that, **Dariusz Mazur** and **Krzystof Śmiszek** have impressed me greatly with their tireless commitment to the rule of law.

Any ideas on how to make Poland's new start a success are most welcome.

So it is particularly encouraging that members of the **Paris Bar Association**, the **Warsaw Bar Association** and the **German Bar Association** are here to discuss this important issue, among others.

III.

Ladies and gentlemen,

There was a time when there seemed to be no alternative to liberal ideas on law and the constitution. In the **post-1990 world**, **liberal thinking seemed to have prevailed**. But by the time of the **2008 financial crisis**, the picture had **changed**. It became possible, once again, to ask whether authoritarian approaches might be more successful and more effective after all. Of course, they are not.

But we have to keep **proving** that this is the case.

We have to **demonstrate** that liberal democracy is capable of providing effective solutions.

Liberal democracy needs to deliver.

In order for democracy and the rule of law to be **resilient** – and that is what is now at stake – you need to have a properly functioning state. A state that people **perceive as an approachable partner in their everyday lives**. A state that fulfils its promise to **provide security** and that manages to **address the critical issue of migration**. A state that is capable of **delivering a competitive economy**.

Here in Europe, we are now at a crucial stage in terms of whether we succeed.

And now for my last point: As we strive to make liberal democracy **more resilient**, we must be **careful not to make it *illiberal***.

If we are to maintain a strong and resilient liberal democracy, we must also **preserve the identity of our social order as a liberal democracy**.

Despite our concerns about the spread of propaganda and disinformation, we must always ensure that the opinion-forming process in our society remains free and open.

Freedom of speech, freedom of expression and **freedom information** are our main defences against ideological or populist threats to our social order.

We must have the confidence to recognise that, ultimately, free and open societies defuse conflicts and confrontations by dealing with them in a productive way.

This can often be hard work. **But free and open discourse is the driving force behind all progress.**

The unpredictable nature of an open society means that we have to endure complex situations that occasionally test the limits of what we are prepared to accept.

But not everything we consider vulgar or unpleasant should be seen as breaking the law.

The belief that we must respond to everything we disapprove of by imposing new bans and restrictions is a sign of misplaced desperation; not only that, it would also weaken rather than strengthen our social order. It would cement the divisions and destroy, from the outset, any chance of finding new common-ground.

Here too, it is a bad idea to let one's actions be dictated by fear. **Fear is a constant danger to liberal society.**

We should **respond** to the challenges of our time **by trusting in liberty**.

I hope you all have a fruitful conference!

Thank you very much.