

CONSTITUTIONAL DEVELOPMENT AND PRINCIPLES OF GOOD GOVERNANCE

Contribution to the course from the perspective of comparison of laws

Question for the final examination

(20 of 100 points for the course)

The principle of the rule of law is one of the generally recognized principles of good governance. What makes it different from some of the other principles? (3 points) Which different concepts have emerged in Europe that later have converged? (4 points) Please list eight important sub-principles of the rule of law and explain the most important ones with some keywords! (13 points)

Note: Please send your answer until the end of the day with a short message directly to the lecturer (tschmit1@gwdg.de). Please structure your answer well and answer only the questions asked! After the exam, all *students are welcome to contact me to discuss the strong and weak points of their paper.*

See for detailed information slide 2 and the diagram from my course contribution, which can be downloaded at the special website for the course contribution, www.thomas-schmitz-yogyakarta.id/Courses/Courses.htm#ConstDevelopment.

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| I. | What makes it different? | / 3 points |
| | <ul style="list-style-type: none"> • not just a political principle from admin. science (which is unsuitable as binding law) but a <i>well-established legal principle that can be applied precisely</i> by the courts in an individual case | |
| II. | Different concept in Europe that later converged: | / 4 points |
| | <ul style="list-style-type: none"> • "Rechtsstaat" (Germany), "État de droit" (France), "rule of law" (Britain) and "general principles of law" (EU law) | |
| II. | 8 important sub-principles of the rule of law | / 8 points |
| | <ul style="list-style-type: none"> • primacy of the constitution • primacy of the law • principle of statutory reservation (for restrictions of fund. rights) • principle of proportionality (the most important element of rule of law) (2 extra points if detailed description) • principles of legal certainty and protection of legitimate expectations <ul style="list-style-type: none"> - principle of definiteness - prohibition of inconsistencies within the law - limitation of retroactive legislation - protection of trust in finality of administrative and court decisions • right to be heard in admin. procedure • right of access to one's file • obligation of authorities to take decisions within reasonable time • obligation of authorities to state reasons for their decision • principle of effective legal protection (in civil law matters / against public authority) • right to a fair court trial • nulla poena sine lege, ne bis in idem, in dubio pro reo, presumption of innocence until conviction • others: | / 5 points |