

CONSTITUTIONALISM IN EUROPEContribution to the course *Constitutional Law* from a comparative perspective**Contents**

Preliminary remark: At the Faculty of Law of Universitas Gadjah Mada the courses are shared by several lecturers. This table informs about the contents of my lectures in April 2021. They complement those of my colleague *Dr. Andy Omara* and *Mahaarum Kusuma Pertiwi* from the perspective of comparison of laws with a special focus on constitutional law in Europe, in particular German constitutional law.

§ 1 Introduction

- I. Why studying constitutional law with a comparative approach?
- II. Why studying European constitutionalism?
- III. The common background: the commitment to modern constitutionalism

§ 2 Basics of constitutionalism

- I. Concept and types of constitution
- II. The constitution as a legal institution
- III. The *pouvoir constituant* (constituent power)
- IV. The constitution as binding law
 - 1) The legal character of the constitution
 - 2) The direct applicability of the constitution
 - 3) The primacy of the constitution
 - 4) The interpretation of ordinary law in conformity with the constitution
- V. Constitutional interpretation
- VI. Milestones in constitutional history

§ 3 The European free and democratic constitutional state (1): fundamental constitutional decisions

- I. Significance and kinds of fundamental constitutional decisions
 - 1) Decisions on fundamental values and ideas defining the constitutional identity of the state
 - 2) Classical fundamental decisions and decisions on the political system
- II. Fundamental constitutional decisions as implementation of the common European fundamental values
 - 1) The common European fundamental values - a historical heritage
 - 2) The Council of Europe as promotor of the European fundamental values
 - 3) The fundamental values clause of the European Union (art. 2 EU Treaty)
- III. The commitment to human dignity and human rights
- IV. The principle of democracy
 - 1) Foundations
 - 2) Variations
 - 3) The concept of defensive democracy

- V. The principle of the rule of law
 - 1) Fundamental idea and historical foundations
 - 2) "Rechtsstaat", "État de droit", "rule of law" and "general principles of law"
 - 3) The various elements of the rule of law (overview)
- VI. The principle of separation of powers
- VII. The principle of solidarity, social justice and cohesion

§ 4 The European free and democratic constitutional state (2): fundamental rights

- I. The parallelism of pan-European, European Union, national and sub-national human and fundamental rights regimes in Europe
- II. The importance of the jurisprudence of the European Court of Human Rights and the national constitutional courts for the development of fundamental rights doctrine in Europe
- III. Elements of general fundamental rights doctrine (overview)
 - 1) Human and fundamental rights
 - 2) Fundamental rights as directly binding law
 - 3) Types of fundamental rights
 - 4) Holders and addressees of fundamental rights
 - 5) Duties of protection
 - 6) The dogmatic structure of (defensive) fundamental rights
- IV. In particular: the limitation of fundamental rights encroachments by the principle of proportionality

§ 5 Constitutional jurisdiction

- I. Constitutional jurisdiction as an essential element of modern constitutionalism
- II. Basic models of constitutional jurisdiction in Europe
- III. The German Federal Constitutional Council [Bundesverfassungsgericht]
 - in particular: the (individual) constitutional complaint
- IV. Constitutionalism in danger: the attempts of authoritarian and oligarchical regimes to neutralise or abuse the constitutional court

§ 6 The struggle for a constitution for the European Union

- I. The European Union as first representative of a new, non-state but state-like form of organisation
- II. The constitutional dispute between the scholars of European Union and constitutional law
- III. The possible but still missing European constitution
- IV. The failed Treaty establishing a Constitution for Europe of 2004
- IV. The enactment of a European constitution as a pivotal challenge of the 2020s

More information on this course contribution at www.thomas-schmitz-yogyakarta.id. For any questions, suggestions and criticism please contact me in my office (Building A, room A.IV.11) or via e-mail at tschmit1@gwdg.de.