

CONSTITUTIONAL REVIEW OF LAWS - A COMPARATIVE PERSPECTIVEContribution to the course *Constitution and Legislation***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 Class B on 26.09. and 17.10.2022. They complement those of my colleague from the perspective of comparison of laws with a special focus on German law.

§ 1 Introduction

- I. Why studying public law with a comparative approach?
- II. Constitutional review as a necessary instrument to enforce the primacy of the constitution - also against infringements by the legislator
- III. Constitutional review as a motor for the development of constitutional law doctrine
- IV. Constitutional review and democracy
- V. Constitutional review and separation of powers

§ 2 Historical foundations and basic models of constitutional jurisdiction

- I. How it all began: The landmark decision Marbury v. Madison of the U.S. Supreme Court of 1803
- II. The long way to the development and acceptance of constitutional review in free and democratic, rule of law based states
- III. The triumph of the constitutional review of laws in modern constitutional states
- IV. Basic models of constitutional jurisdiction
 - 1) The U.S. model: Constitutional review by the ordinary courts
 - 2) The French model: Constitutional review by a Constitutional Council
 - 3) The Austrian model: Constitutional review by a specialised Constitutional Court
- V. The most prominent constitutional court: the German Bundesverfassungsgericht [Federal Constitutional Court]
 - 1) Constitutional status
 - 2) Structure and internal organisation
 - 3) Types of proceedings (overview) (→ diagram.1)
 - 4) The Bundesverfassungsgericht as a model and source of inspiration for the development of constitutional justice in Europe and in the world

§ 3 Types of the constitutional review of laws - the example of Germany (→ special paper)

- I. Abstract constitutional review
 - 1) General remarks
 - 2) Admissibility of the application
 - 3) The decision of the Federal Constitutional Court
 - 4) Special problems
- II. Concrete constitutional review
 - 1) General remarks
 - 2) Admissibility of the judicial referral

- 3) The decision of the Federal Constitutional Court
- 4) Special problems
- III. Constitutional review of laws in constitutional complaint proceedings
 - 1) General remarks
 - 2) Admissibility of the constitutional complaint
 - 3) The acceptance procedure
 - 4) The decision of the Federal Constitutional Court
 - 5) Special problems
- IV. Constitutional review of laws in case of constitutional complaints of communes or counties for violation of their right to self-government

§ 4 The examination of the constitutionality of laws - the example of Germany

(→ special paper)

- I. A systematic approach for a thorough and comprehensive examination
- II. The constitutionality in form
 - 1) Legislative competence (of the Federation/Land)
 - 2) No violation of constitutional requirements in the legislative procedure
 - 3) No violation of constitutional requirements concerning the form
- III. The constitutionality in substance
 - 1) No violation of fundamental rights
 - 2) No violation of fundamental constitutional principles
 - 3) No violation of other constitutional principles
 - 4) No violation of other constitutional norms

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), via WhatsApp or via e-mail at tschmit1@gwdg.de.