

Part II: Legal aspects of the state institutions in parliamentary, presidential and semi-presidential governing systems

§ 5 The distinction between parliamentary, presidential and semi-presidential (hybrid) governing systems

I. A common distinction in political science and comparative constitutional law doctrine

- most-cited examples: United Kingdom (parliamentary), USA (presidential), France (semi-presidential)
- other examples: Germany, Italy (parliamentary), Indonesia (presidential), Poland (semi-presidential)
- presidential governing systems are more common in developing or less stable countries but cannot be found in the European Union
- some countries change the governing system after a failure of their old one (France), the rise of an authoritarian ruler (Turkey) or the end of a dictatorship (Spain)

II. Categorical differences between the three types of governing systems

- usually, in a presidential system the president is both, the head of state and the head of government, while in a parliamentary system the head of government is a prime minister elected by the parliament and the government depends on the parliament
- usually, in a *presidential system* there is a *stricter separation of powers* with a greater independence from each other while in a parliamentary system the powers are more closely interlinked and interlocked
- if the majority in the parliament does not support the president this can lead to numerous constitutional disputes (example: USA during the first Donald Trump Presidency)
- in a semi-presidential system, there may be a separate head of government and usually the executive-legislative relations are more complicated
- example: France, where some important powers are concentrated with the Prime Minister, not with the President

III. Limits to the differences set by the fundamental principle of separation of powers

- in presidential governing systems, the executive and legislative usually work more independently from each other, but the principle of separation of powers applies limits and balances the powers of *all* institutions also here
- the *principle of statutory reservation* applies also here: the executive, even the president, needs a specific *legal basis* in an act of parliament for any encroachment on fund. rights
- the *core area* of each power must be respected in any governing system
- example: in Germany the parliament cannot decide on the design of the government
- example: even in a presidential system, not the president but the parliament decides on the state budget
- the type of governing system has no impact on the judicial control of the executive
- the courts, in particular the constitutional court, always have the final say
- however, in a presidential system, there is a greater temptation to ignore this:

**Confusing democratic presidency with presidential dictatorship:
the example of the Second Donald Trump Administration in the USA:**

DONALD TRUMP, 15.02.2025: "He who saves his Country does not violate any law."

J.D. VANCE, 09.02.2025: "Judges aren't allowed to control the executive's legitimate power."

A revolutionary step to abolish separation of powers and transform the USA to a dictatorship and, thus, a ground for impeachment?

IV. Limits to the significance of the distinction set by the uniqueness of each constitutional system

- each institutional system must be seen in the *context of the whole constitution* and constitutional history of the state
- solutions and doctrine from other constit. states usually cannot be transferred directly but only serve as a source of general inspiration and orientation
- those from countries with a different type of government system must be analysed carefully even before being taken as a source of inspiration or orientation

V. In particular: the constitutional court as the final arbiter in any type of governing system

- the prerogative of the constitutional court to *settle disputes* between the state institutions *by judicial decision* and, thus, to develop by jurisprudence the institutional law
 - esp. in the way of *judicial further developing of law*, guided by inspiration drawn from comparison of laws
 - this requires a series of well-founded, elaborated judgements forming a sophisticated, coherent jurisprudence
- the need to guarantee and enforce effectively the independence and authority of the constitutional jurisdiction in order to ensure the separation of powers
 - but also the need of professional independence and ethics of the constitutional judges
- the important *role of the scholars* to support the development of constit. jurisprudence by compiling, systematising, analysing & critically discussing it in a broad scientific discourse
- not always the good guys: the controversial role of the Constitutional Court of Thailand in Thailand's political conflicts, the attempt of a coup d'Etat by the Constitutional Court of Moldova in June 2019 and the crisis of the US Supreme Court in the 2020s