

THE IMPEACHMENT OF THE PRESIDENT IN COMPARATIVE PERSPECTIVE
Contribution to the course *The Presidency* from the perspective of comparison of laws

**Impeachment clauses in national constitutions
(in English translation)**

Constitution of the United States of America of 1787

Art. I Sect. 2 Cl. 5

The House of Representatives ... shall have the sole Power of Impeachment.

Art. I Sect. 3 Cl. 6, 7

The *Senate* shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the *Chief Justice shall preside*: And no Person shall be convicted without the Concurrence of *two thirds* of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Art. II Sect. 4

The President, Vice President and all civil Officers of the United States, *shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors*.

Constitution of the Federative Republic of Brazil of 1988

Art. 51

It is exclusively the competence of the Chamber of Deputies:

I – to authorize, by *two-thirds* of its members, legal proceeding to be initiated against the president and the vice-president of the Republic and the ministers of state; ...

Art. 52

It is exclusively the competence of the *Federal Senate*:

I – to effect the legal proceeding and trial of the president and vice-president of the Republic for crime of malversation, and the ministers of State and the commanders of the Navy, the Army, and the Air Force for crimes of the same nature relating to those;

...

Sole paragraph. In the cases provided for in items I ... , the *chief justice of the Supreme Federal Court shall act as president*, and the sentence, which may only be issued by *two-thirds* of the votes of the Federal Senate, shall be limited to the loss of office with disqualification to hold any public office for a period of eight years, without prejudice to other applicable judicial sanctions.

Art. 85

Those acts of the president of the Republic which attempt on the Federal Constitution and especially on the following, are *crimes of malversation*:

I – the existence of the Union;

II – the free exercise of the Legislative Power, the Judicial Power, the Public Prosecution and the constitutional Powers of the units of the Federation;

III – the exercise of political, individual and social rights;

IV – the internal security of the country;

V – probity in the administration;

VI – the budgetary law;

VII – compliance with the laws and with court decisions.

Sole paragraph. These crimes shall be defined in a special law, which shall establish the rules of procedure and trial.

Art. 86

If charges against the president of the Republic are accepted by two-thirds of the Chamber of Deputies, he shall be submitted to trial before the Supreme Federal Court for common criminal offences or before the Federal Senate for crimes of malversation.

Paragraph 1. The *president shall be suspended* from his functions:

I – in common criminal offences, if the accusation or the complaint is received by the Supreme Federal Court;

II – in the event of crimes of malversation, after the proceeding is instituted by the Federal Senate.

Paragraph 2. If, after a period of one hundred and eighty days, the trial has not been concluded, the suspension of the president shall cease without prejudice to the normal progress of the proceeding.

Paragraph 3. In the event of common offences, the president of the Republic shall not be subject to arrest as long as no sentence is rendered.

Paragraph 4. During his term of office, the president of the Republic may not be held liable to acts outside the performance of his functions.

Constitution of the French Republic of 1958

Art. 68 (introduced 2007)

The President of the Republic shall not be *removed from office* ["*destitué*"] during the term thereof on any grounds other than a *breach of his duties clearly* ["*manifestment*"] *incompatible with the exercise of his mandate*.

Such removal from office shall be proclaimed by Parliament sitting as the *High Court* ["*Haute Cour*"].

The proposal to convene the High Court adopted by one or other of the Houses of Parliament shall be immediately transmitted to the other House which shall make its decision known within fifteen days of receipt thereof.

The High Court shall be presided over by the President of the National Assembly. It shall give its ruling as to the removal from office of the President, by secret ballot, within one month.

Its decision shall have immediate effect.

Rulings given hereunder shall require a majority of *two thirds* of the members of the House involved or of the High Court. No proxy voting shall be allowed. Only votes in favour of the removal from office or the convening of the High Court shall be counted.

An Institutional Act ["*loi organique*"] shall determine the conditions for the application hereof.

Constitution of the Republic of Korea of 1987

Art. 65

(1) In case the President ... and other public officials designated by Act *have violated the Constitution or other Acts in the performance of official duties*, the National Assembly may pass motions for their impeachment.

(2) A motion for impeachment prescribed in paragraph (1) may be proposed by one third or more of the total members of the National Assembly, and shall require a concurrent vote of a majority of the total members of the National Assembly for passage: Provided, That a motion for the impeachment of the President shall be *proposed by a majority of the total members* of the National Assembly and *approved by two thirds* or more of the total members of the National Assembly.

(3) Any person against whom a motion for impeachment has been passed *shall be suspended* from exercising his or her power until the impeachment has been adjudicated.

(4) A decision on impeachment shall not extend further than removal from public office: Provided, That it shall not exempt the person impeached from civil or criminal liability.

Article 111

(1) The Constitutional Court shall have jurisdiction over the following matters:

...

2. Impeachment; ...

Article 113

(1) When the Constitutional Court makes a decision ... of impeachment ..., the concurrence of six [of 9] Justices or more shall be required.

Constitution of the Republic of Indonesia of 1945

Art. 7A

The President and/or the Vice-President may be dismissed from his/her position during his/her term of office by the MPR on the proposal of the House of Representatives ["Dewan Perwakilan Rakyat"], both if it is proven that he/she has *violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude* ["*perbuatan tercela*"], and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President.

Art. 7B

(1) Any *proposal for the dismissal* of the President and/or the Vice-President may be *submitted by the DPR to the MPR only by first submitting a request to the Constitutional Court* to investigate, bring to trial, and issue a decision on the opinion of the DPR either that the President and/or Vice-President has violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, and/or that the President and/or Vice-President no longer meets the qualifications to serve as President and/or Vice-President.

(2) The opinion of the DPR that the President and/or Vice-President has violated the law or no longer meets the qualifications to serve as President and/or Vice-President is undertaken in the course of implementation of the supervision function of the DPR.

(3) The submission of the request of the DPR to the Constitutional Court shall only be made with the support of at least 2/3 of the total members of the DPR who are present in a plenary session that is attended by at least 2/3 of the total membership of the DPR.

(4) The Constitutional Court has the obligation to investigate, bring to trial, and reach the most just decision on the opinion of the DPR at the latest ninety days after the request of the DPR was received by the Constitutional Court.

(5) If the Constitutional Court decides that the President and/or Vice-President is proved to have violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude; and/or the President and/or Vice-President is proved no longer to meet the qualifications to serve as President and/or Vice-President, the DPR shall hold a plenary session to submit the proposal to impeach the President and/or Vice-President to the MPR.

(6) The MPR shall hold a session to decide on the proposal of the DPR at the latest thirty days after its receipt of the proposal.

(7) The *decision of the MPR* over the proposal to impeach the President and/or Vice-President shall be taken during a plenary session of the MPR which is attended by at least 3/4 of the total membership and shall require the approval of at least 2/3 of the total of members who are present, after the President and/or Vice-President have been given the opportunity to present his/her explanation to the plenary session of the MPR.

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.