

§ 1 Introduction

I. Merits and limits of studying the law of state institutions with a comparative approach

- comparative approach allows better understanding of the own constitutional law, its particularities (and alternatives), its strong and weak points and the perspectives of its development
- also serves as source of inspiration and for a better critical analysis of the domestic constitutional practice and jurisprudence
- yet, regarding the law of the state institutions, caution is advised not to jump to conclusions, since each constitution establishes a unique, precisely balanced system and an inconsiderate adoption of foreign concepts, practices or interpretations could affect that balance

II. A heterogeneous use of terminology for the presidential indictment and removal from office

- the English term "impeachment" literally only refers to the indictment
- in some states (e.g. U.S.A.) the term or its national equivalent is used in this sense while in others (e.g. Brazil) it refers to the conviction and removal from office
- in the international political and legal discourse the term is used imprecisely in a wide sense, referring to the indictment, conviction, removal from office and relevant procedure

III. The impeachment of the president as one of the most sensitive topics in presidential and semi-presidential governing systems

1) The need to respect the high democratic legitimacy of the directly elected president versus the need to stop him from abusing his powerful position

- as the president has been *directly elected* by the people, he enjoys the same highest democratic legitimacy as the parliament and, unlike in a parliamentary governing system, does not depend on the will or sympathy of the parliament
- on the other hand, in a system based on separation of powers and rule of law, even the holder of the highest democratic legitimacy must, if necessary, be stopped from abusing his power and must be held accountable for his conduct in office
- thus, the removal of the directly elected president must be possible but only for compelling, imperative reasons defined in the constitution and in a fair and transparent procedure

2) The high risk of abuse of impeachment proceedings

- in a presidential system the easiest way to override the democratic decision of the people
- often used by conservative-reactionary elites to reverse reforms or to block progress

3) A quasi-criminal procedure or a predominantly political instrument?

- the terminology and some grounds of impeachment referring to criminal acts give the appearance of proceedings modeled on criminal law but it is usually not judges but politicians who decide
- the grounds of impeachment often include one which is too vague for judicial or quasi-judicial proceedings and requires not a legal but political or moral assessment

IV. Excursus: the much easier removal of the head of the executive branch in parliamentary governing systems

- in most systems, the prime minister as head of the executive branch can be removed at any time, under no special legal requirements, by a purely political *vote of no confidence of the parliament*, adopted by the majority of its members
 - The German Basic Law, however, only allows a constructive vote of no confidence against the chancellor, that means by the way of electing a successor who will form a new government.
- special proceedings in parliamentary systems to remove the state president (for crimes or intentional violation of the constitution) are less political and cannot be compared with the impeachment in presidential and semi-presidential systems