

## CONSTITUTIONAL REVIEW OF LAWS - A COMPARATIVE PERSPECTIVE

Contribution 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 on 23.09. and 20.10. (Class B) resp. 21.10. (Class A). 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

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