

Comparative Constitutional Law

Code: SSC2060

Course Manual

Maastricht University
University College Maastricht
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Course coordinator & tutor: Hoai-Thu Nguyen, LL.M.

Preface

Course objectives

The course *Comparative Constitutional Law* provides an introduction to fundamental concepts of constitutional law, the constitutional systems of five Western democracies (United States, United Kingdom, France, Germany, and the Netherlands), as well as the system of fundamental rights protection under the European Convention on Human Rights (ECHR). The aim of the course is for students to become acquainted with said concepts and systems, to become aware of the effects of constitutional setup of a state on its politics, and to practice independent research into subjects of comparative constitutional law.

Key terms

The course devotes attention to the functions of a state, the competences and organisation of state organs, different systems of government, separation of powers, democracy and electoral systems, government-parliament relations, federalism, bicameralism, constitutional review, as well as fundamental rights protection.

Working method

This course requires full and regular attendance both in tutorial group meetings and lectures, as well as thorough preparation for each session. Attendance requirements for tutorial groups are applied in accordance with UCM regulations. In principle, each week features one lecture and two tutorial group meetings. Tutorial group meetings shall be used to explore the constitutional systems and related subjects on the basis of questions and tasks. The tasks comprise fictional scenarios that practically illustrate concepts under consideration. When analysing these scenarios, the focus of the discussion should be whether the positions taken and the actions carried out by the relevant actors are in accordance with the constitution. Using their literature, students should then address the background to the tasks, answer specific questions on the tasks, distilling in the process the key constitutional concepts from the scenarios. Lectures shall complement the themes that are discussed in the tutorial group meetings.

Course providers

The course is taught by Hoai-Thu Nguyen (tutorials) and Sascha Hardt (lectures). Please contact Thu in case of any problems, issues or questions; suggestions for the improvement of the course are always welcome.

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Literature and materials

Students will need the standard handbook, a compilation of constitutional and legislative provisions and an e-reader for this course. Furthermore, short video clips and self-tests on matters of specific interest will be provided via ELEUM.

- Most of the course content is covered by the handbook:
 - A.W. Heringa: *Constitutions Compared - An Introduction to Comparative Constitutional Law*, 4th edition, Cambridge/Antwerp/Portland: Intersentia, 2016.
ISBN: 9781780683997
- Students are required to purchase the following compilation of constitutional and legislative provisions, which may be used during the exam:
 - S. Hardt and A.W. Heringa (eds.): *Sources of Constitutional Law*, Antwerp/Oxford/Portland: Intersentia, 2014.
ISBN: 9781780682679

In addition to the handbook and the compilation, the compulsory literature for this course comprises additional reading materials. Due to the rules pertaining to e-readers, articles and other additional materials could not be included in a regular e-reader because of their length (e-reader contributions may not be longer than 8.000 words). Therefore, such additional literature is provided as online content accessible through web links in this course manual. Like a regular e-reader, such additional literature constitutes compulsory and examinable course material. In order to access this content, students either need to log in to *student desktop anywhere* via VPN or use a university terminal. For instructions on how to use the VPN connection, please consult the manual available on MyUM or contact the ICT service desk.

Lastly, students are encouraged to view a number of short video clips provided on ELEUM. These clips contain concise mini-lectures on a number of core topics of the course and are accompanied by short self-tests which can be completed online after watching the video clips.

Examination

Students will receive a final grade on a scale from 0 to 10, 10 being the best and 5.5 being the minimum passing grade. The **final grade** of the course will be composed of the grade for a mid-term paper and the grade of a final written exam; the grade for the paper counts for 30%, that for the final exam for 70% of the final grade. The grade for the paper exam will be increased by one grade point where a student has received a mark “good” for both in-class presentations (see below).

Paper

Students are required to write a paper of approximately 2,500 words ($\pm 10\%$). The paper should cover one aspect (e.g. bicameralism, federalism, judicial review, election systems, etc.) of the constitution of a country that is *not* examined during the course (i.e. a country other than the United States, Germany, France, the United Kingdom and the Netherlands). Students are asked to compare the country of their choice (i.e. the external comparator) with one of the countries that are covered during the course (i.e. the internal comparator).

The papers must be submitted in week six of the course. The precise deadline for handing in papers will be announced during the first week of the course. Papers must be uploaded via the ‘Safe Assignment’ tool of ELEUM. Plagiarism will be penalized. A hard copy of the paper must be submitted to the Office of Student Affairs (OSA). Further instructions regarding the paper will be posted on ELEUM.

Presentations

Students are required to give two short presentations during the tutorial group meetings. One presentation must be given individually and one presentation in pairs. Presentations are not to exceed the fixed time limit of ten minutes. The quality of the presentations will affect the paper grade, in that if the student holds, in both instances, a good-quality presentation (for its content, structure and style of presentation), the grade of the paper will shift one grade point upwards. Presentation topics will be distributed during the first meeting; being present in that meeting and familiarising yourself with the topics beforehand is therefore highly advisable.

Exam

The **final exam** will consist of comparative cases and/or essay questions covering the entire course content.

Re-sit

The **re-sit** for this course will take the form of an oral exam of about 30 minutes. The re-sit will cover the entire course content, and will account for 100% of the final grade. This means that the grade for the paper and the bonus point which can be gained through good presentations do *not* affect the grade of the re-sit exam.

To the final exam and the re-sit, **students may take with them**: non-legal, non-explanatory dictionaries and the compilation *Sources of Constitutional Law*. None of the above may be annotated in writing (only highlighting is permitted).

Lecture schedule

The schedule below indicated the lecture topics and the **mandatory readings which have to be prepared in advance of the respective lecture.**

Week	Topic / E-Reader
1	Introductory Lecture: Basic Concepts of Constitutional Law <ul style="list-style-type: none"> ○ M. Claes, 'Constitutional law', in J. Smits, ed., <i>Elgar Encyclopedia of Comparative Law</i> (Cheltenham: Elgar 2012), pp. 223-236. Available online at: https://www.dawsonera-com.ezproxy.ub.unimaas.nl/readonline/9781781006108/startPage/241
2	Federalism and bicameralism <ul style="list-style-type: none"> ○ Stanford Encyclopaedia of Philosophy: 'Federalism'. Available at: http://plato.stanford.edu/entries/federalism/
3	No Lecture
4	Election Systems <ul style="list-style-type: none"> ○ A. Lijphart, <i>Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries</i> (New Haven: Yale University Press 1999), pp. 143-170.
5	Ministerial Accountability <ul style="list-style-type: none"> ○ No additional literature
6	Judicial Review and Constitutional Courts <ul style="list-style-type: none"> ○ Jeremy Waldron, 'The core of the case against judicial review', 115 Yale L.J. 1346 (2005-2006). Available at: http://www.heinonline.org/HOL/Page?handle=hein.journals/ylr115&div=55&collection=journals&set_as_cursor=1&men_tab=srchresults#1366 ○ Richard H. Fallon, Jr., 'The core of an uneasy case for judicial review', 121 Harv. L. Rev. 1693 (2007-2008). Available at: http://www.heinonline.org/HOL/Page?handle=hein.journals/hlr121&div=83&collection=journals&set_as_cursor=0&men_tab=srchresults#1715
7	An Introduction to the European Court of Human Rights <ul style="list-style-type: none"> ○ J.-F. Renucci, 'Part one: The rights guaranteed' in: <i>Introduction to the European convention on human rights</i> (1st ed.), Council of Europe Publishing, 2005, pp. 8-19; 22-27. ○ Alastair Mowbray, 'The Creativity of the European Court of Human Rights' in <i>Human Rights Law Review</i> 5:1 (2005), p. 57-79. Available at: http://www.heinonline.org/HOL/Page?handle=hein.journals/hlr5&div=7&collection=journals&set_as_cursor=0&men_tab=srchresults#61

List of topics for presentations

*Presentations will be given in the tutorial meetings which correspond to their respective topics. **Presentation topics will be distributed during the first tutorial meeting of the course.** It is therefore very advisable to be present during this meeting.*

USA:

- President Obama and his Health Care Reform: The legal rules of the legislative process and the adoption of a controversial piece of legislation
- Gay marriage in the United States: How federal law can ban or prescribe same-sex marriage - legal constraints and politics (consider recent case law!)
- The federal government shutdown of 2013 – legal rules and politics

Germany:

- The Federal President vetoes legislation: The legal rules on the veto powers of the President and their use in practice
- The dissolution of the Bundestag of 2005: The rules on how and when to dissolve parliament and their interpretation in '05
- The Bundestag election system and the Constitutional Court: rulings of '08 and '12 and their consequences

France:

- The presidential and parliamentary elections of 2012: The legal rules of the election system and how they played out in '12
- The tool of referendum before and after the constitutional reform of 21 July 2008: Law and politics on how to call a referendum
- The French gay marriage act of 2013: the legal rules of the legislative process and the role of the Constitutional Council in the adoption of a controversial piece of legislation

UK:

- Four nations in one country: Westminster Parliament and devolution
- Coalition government in Britain: The constitutional rules and politics of forming a coalition government in 2010
- The referendum on Scottish independence 2014

Netherlands:

- The new cabinet formation process: The law and politics of forming a cabinet and the changing role of the monarch
- The Kingdom of the Netherlands as a (con-?) federal entity – the constitutional status of the Caribbean parts of the Netherlands

Judicial Review

- The German Federal Constitutional Court and the European Union: dualism and supremacy
- Does the Netherlands have judicial review? If not, should it introduce it?

Human rights review and the Strasbourg mechanism:

- The adoption of Protocol 14 to the ECHR: content and challenges
- The accession of the EU to the ECHR: legal issues and challenges

Meetings

Meeting 1: Introductory Meeting

Important: this first meeting must be prepared thoroughly!

One great object of the constitution is to restrain majorities from oppressing minorities or encroaching upon their just rights.

James K. Polk

No Constitution can exist without compromise.

Otto von Bismarck

For forms of government let fools contest; whatever is best administered is best.

Alexander Pope

A constitution should be short and obscure.

Napoleon Bonaparte

Unfortunately, people are re-interpreting the Constitution as a living document, and it's not. It's a solid-based document and it shouldn't be played with.

Chuck Norris

The Constitution of a country tells us nothing about its constitution.

Peter F. Keller

Literature:

- *Constitutions Compared*, chapter 1; chapter 2 section 1 (pp. 1-34)
- Stanford Encyclopaedia of Philosophy: 'Constitutionalism'
Available at: <http://plato.stanford.edu/entries/constitutionalism/>

Task 1: Basic Concepts I

Large parts of this course are devoted to studying the concrete constitutional law of five western democracies, their systems of government and the institutional actors within these systems. But before we start studying these things, it is useful to address some more fundamental questions, and to become aware of how lawyers, political scientists, philosophers, and other people might answer them differently:

- What is a constitution?
- What is its function?
- Are there different kinds of constitutions? If so, what are they?
- What is constitutional *law*? Does it differ from other law, and if so, what is the difference?
- What are the sources of constitutional law?
- Why is it useful to look at constitutional law from a comparative perspective?

Task 2: Basic Concepts II

On the basis of the literature *and* your own ideas, formulate concise definitions of the following concepts:

- State
- Sovereignty
- Power
- Competence
- Right

Meeting 2: United States

Keywords: *presidential system, impeachment, separation of powers, checks and balances*

Task 1: Questions

Try to answer the following questions. Wherever appropriate, provide constitutional references to substantiate your answer!

- Constitutionally speaking, what kind of a country is the United States?
- Does it have territorial sub-units? What are they, how many are there?
- What are the main federal government institutions in the US?
- What different branches of government are there?
- How and for how long are they elected / appointed?
- How can they be removed? By whom?
- What are their functions and their competences?
- How do they relate to one another?

Task 2: fiction or nonfiction?

When director Michael Moore won an Oscar for his documentary 'Bowling for Columbine' in 2003, he used his time on stage during the award ceremony to criticize the way in which President George W. Bush had been elected:

"We like nonfiction and yet we live in fictitious times. We live in a time where we have fictitious election results that elect a fictitious president."

Task 3:

A number of US politicians have proposed that the smallest US State by population, Wyoming, should have only one instead of two Senators in the US Senate. According to Californian Senator Roger R. Abbot, it is manifestly unreasonable that Wyoming, with only 576.000 inhabitants (2012) should have the same number of votes in the Senate as California with a population of over 38 million.

In a *Fox News* interview, Mr Abbot demands a constitutional amendment. He claims that "no one of a sound mind can possibly find this over-representation of Wyoming democratic. Therefore, we are confident that our initiative has the necessary support of a majority of states." Immediately, William H. Miller, the Governor of Wyoming releases the following tweet: "Apparently California has too many Senators itself. How else could one of them waste his time like this?"

That night, Ted and Sam, two friends from Elk Mountain, Wyoming, discuss the matter over a couple of beers. Ted proposes a compromise: "I see Mr Abbot's point, but Senators are too important. They should reduce the number of Representatives instead." Sam does not agree. "The term of representatives is much longer, and only they can impeach the president. Anyway, nothing is going to happen since any constitutional amendment requires the consent of all 50 states."

Meeting 3: United States

Keywords: *legislative process, federal competence, initiative, bicameralism, presentment*

Task 4: drinking age

Note: when analysing the scenario, the focus of the discussion should be whether the positions taken and the actions carried out by the actors are in accordance with the constitution.

WASHINGTON, D.C. – The President of the United States yesterday announced that he wishes to raise the nationwide minimum drinking age from the current twenty-one to twenty-three years. He justified this initiative as protecting consumer health and improving public morals. “We have a responsibility to protect young Americans from the dangers of alcohol,” he told journalists at a White House press briefing. He considers launching a bill to that effect.

Daryl Van Horne, a Democratic Congressman from Vermont, is sceptical, however. “A President is there for executing laws, not for making them,” he noted in a television interview. Meanwhile, Jack Torrance, the Republican Governor of Oklahoma, is upset by the President’s plans for a different reason. “Washington has no business in regulating drinking ages,” he stated at a press conference in Oklahoma City. “They should stick to taking care of federal matters.”

Melvin Udall, the majority leader in the House of Representatives, already indicated that there could be broad support in the House for a new minimum age. At the same time, however, sixty-eight Senators have openly vowed to oppose any plans that would raise the minimum drinking age unless such plans would be combined with tax breaks for bars and restaurants. “A higher minimum age means a huge economic loss to the food and beverages sector,” their spokesman, senior Senator from California Patrick McMurphy, told the press. “Only by lowering the tax burden on bar and restaurant owners can we prevent a wave of bankruptcies.” The President, in turn, was swift to respond that he would oppose any new tax breaks, and urged Mr McMurphy and his fellow Senators not to provoke a deadlock over this issue.

Meeting 4: Germany

Keywords: *government formation, constructive vote of no-confidence, confidence question*

Task 1: Questions

Constitutionally speaking, what kind of a country is Germany?

Does it have territorial sub-units? What are they, how many are there?

What are the main federal government institutions in Germany?

Task 2: Comparative questions:

What are the differences and similarities between the Bundesrat and the US Senate?

What are the differences between the court structure of Germany and of the USA?

Does the USA have a comparable mechanism to the constructive vote of no confidence? Why / why not?

Task 3: Government crisis

BERLIN, 23 April 2015 – After the recent row over allegations of tax evasion against several members of the cabinet, rumours are spreading that the grand coalition in support of Angela Merkel's government is falling apart. Well-informed persons suggest, however, that the chancellor is not ready resign and would be willing to remain in office even with a majority in the Bundestag against her; after all, general elections will only be held in 2017. Others in political Berlin are outraged: a spokesperson of the Pirate Party demanded that, should Merkel really dare to "follow such dictatorial patterns", the other parties in the Bundestag should file a petition to the federal president. According to the enraged Pirate, "only the president has the power to fire Merkel and install a chancellor of his choosing. Alternatively, the Bundestag can also dissolve itself and thus bring about early elections."

Meanwhile, the popular initiative *More Democracy NOW* has released a statement according to which the current government crisis is symptomatic of the undemocratic way in which the federal government is elected. According to *MDN*, "what is needed to cure our political system is a directly elected chancellor, equipped with an independent mandate."

Meeting 5: Germany

Keywords: *election system, legislative process, federal competence, bicameralism*

Task 4: At the polling station

Bundestag elections are coming up and Günther is very excited: he favours the Green Party and hopes that, finally, they will again be part of the governing coalition. Since voters in Germany have two votes, he wonders whether it would be good to vote strategically. He also wonders about a number of things he has heard about in the news but cannot make any sense of, such as overhang mandates (do they still exist?), negative vote value and some constitutionality issues he cannot quite remember. In order to find out how exactly his votes are translated into Bundestag seats, he turns to the Federal Electoral Code (*Bundeswahlgesetz, BWahlG*), where he reads:

§ 4. Each voter has two votes, a first vote for the election of a member of the Bundestag from the electoral district, and a second vote for the election of a State list.

§ 5. In each electoral district, one member of the Bundestag is elected. The candidate who receives the most votes is elected. In case of a tie, a lot to be drawn by the district returning officer [Kreiswahlleiter] decides.

§ 6. (1) For the distribution of seats to be filled from State lists, the second votes cast for each State list are added. The second votes of those voters who have cast their first votes for a candidate who was successful in his electoral district and who has been put forward in accordance with § 20 (3) or by a political party which is not eligible for the allocation of seats pursuant to paragraph 3 or for which no State list was admitted in the respective State are not taken into account. The number of successful electoral district candidates stipulated in the second sentence is subtracted from the total number of members of the Bundestag (§1 (1)).

(2) In a first distribution, the total number of seats (§1 (1)) is initially allocated, pursuant to the calculation method described in the second to seventh sentence, to the States according to their share of the population (§3 (1)) and in each State the number of seats remaining there pursuant to paragraph 1, third sentence, is subsequently allocated to the State lists on the basis of the second votes to be taken into account. Each State list receives as many seats as result from the division of the sum of the second votes it received by an allocation divisor. Decimals under 0.5 are rounded down to the whole number below, those over 0.5 are rounded up to the whole number above. Decimals which are equal to 0.5 are rounded off either upwards or downwards so as to maintain the total number of seats to be distributed; if this results in several possible allocations of seats, the lot, to be drawn by the federal returning officer [Bundeswahlleiter], decides. The allocation divisor must be determined in such a way that, in total, as many seats are allocated to State lists as there are seats available. For that purpose, first the total number of second votes of all State lists to be taken into account is divided by the total number of seats remaining pursuant to paragraph 1, third sentence. If, after this, more seats are allocated to the State lists than there are seats available, then the distribution divisor must be raised so that the number of available seats is obtained in the calculation; if too few seats are allocated to the State lists, the distribution divisor is to be lowered accordingly.

(3) In the allocation of the seats to the State lists, only parties which have received at least five per cent of the valid second votes cast in the electoral territory or which have won a seat in at least three electoral districts are taken into account. The first sentence does not apply to lists submitted by parties of national minorities.

(4) From the number of seats thus determined for each State list the number of seats won by the party in the electoral districts of the state (§5) is subtracted. Seats won in the electoral districts remain in the hands of a party, even if their number exceeds that determined pursuant to paragraph 2 and 3.

(5) The number of seats remaining pursuant to paragraph 1, third sentence, is raised until every party receives at least as many seats in the second distribution pursuant to paragraph 6, first sentence, as have been allocated to it in the first distribution pursuant to paragraph 2 and 3 in addition to the seats won in electoral districts which cannot be subtracted, pursuant to paragraph 4, first sentence, from the number of seats determined for the State list. The total number of seats (§1 (1)) increases by the difference.

(6) The seats to be allocated pursuant to paragraph 5, first sentence, are in any event distributed nationwide, according to the number of second votes to be taken into account, among the parties to be taken into account pursuant to paragraph 3, using the calculation method described in paragraph 2, second to seventh sentence. Within the parties, the seats are distributed, according to the number of second votes to be taken into account, to the State lists, using the calculation method described in paragraph 2, second to seventh sentence; each State list is allocated at least the number of seats won by the party in the electoral districts of the State. From the number of seats determined for each State list the number of seats won by the party in the electoral districts of the State (§5) is subtracted. The remaining seats are filled from the State list in the order specified therein. Candidates who have been elected in an electoral district are not considered on the state list. If a State list is allocated more seats than candidates are nominated, these seats remain vacant.

(7) If, in the distribution pursuant to paragraph 2 to 6, a party which has received more than half of the second votes cast for all parties to be taken into account does not receive more than half of the seats, it is allocated additional seats until it holds one seat more than half of the seats. Within the party, the seats are distributed pursuant to paragraph 6, second to sixth sentence. In such a case, the total number of seats (§1 (1)) determined pursuant to paragraph 5 increases by the difference.

After reading this, Günther takes two Aspirin and a deep breath and asks you to explain the Bundestag election system to him.

Meeting 5 (continued): Germany

Task 5: A new immigration bill

Note: when analysing the scenario, the focus of the discussion should be whether the positions taken and the actions carried out by the actors are in accordance with the constitution.

BERLIN – The German cabinet today introduced a new immigration bill that is intended to reform the current regime governing the admission of immigrants, their status and residence entitlement, and the criminal sanctions system for illegal immigration. “This is a great step forward,” Julia Kaiser, the minister of internal affairs, told the Bundestag. “With this bill Germany will be able to control immigration, help integrate immigrants into our society, and be more open to much-needed high-skilled workers.”

Kai Pompe, internal affairs spokesman of the main opposition party, criticizes the bill. “The provisions on integrating foreigners are pure window-dressing,” he claimed during a parliamentary debate. “Nothing is done about immigrants who keep on staying here even though their residence permit has long expired, and who won’t even learn our language.” The opposition vowed to vote against the bill, and expects to be joined by defectors from within the government parties.

Since the government’s majority in the Bundestag is a mere two seats, the chancellor is considering linking the bill to a question of confidence in her cabinet. “The immigration bill is central to our manifesto and our coalition agreement,” she noted after a meeting of the leaders of the coalition parties. Raising a confidence question is expected to impose discipline on the government’s rank-and-file.

Meanwhile, the sixteen federal states are aligning for the eventual Bundesrat voting. The opposition controls just under half of the total votes in the Bundesrat, the assent of which is required to pass the immigration bill. With the help of the votes from Saxony, the bill could be defeated. While Markus Krass, Saxony’s prime-minister, supports the bill, his junior coalition partner does not. “Saxony has four votes in the Bundesrat,” remarks a political scientist. “Even if they split the votes, the bill would pass. It will only fail if Saxony does not support it.”

Meeting 6: France

Keywords: semi-presidential system, cohabitation, presidential powers, motion of censure

Task 1: Questions

Constitutionally speaking, what kind of a country is France?
Does it have territorial sub-units? What are they, how many are there?
What are the main government institutions in France?
What is cohabitation?
How can the French Constitution be changed?
Why was the President's term shortened?

Task 2: Comparative Questions:

What are the similarities and differences in the ministerial accountability mechanisms towards parliament in Germany and France?
How does the constitutional position of the French President compare with his US counterpart?
What are the similarities and differences between the US Supreme Court and the French Constitutional Council?

Task 3: Political games

Antoine Gicquel is a 43-year-old lawyer from Clermont-Ferrand and has just been re-elected a member of the *Assemblée Nationale* – or at least he thinks so: while he entered the run-off as the leading candidate in his electoral district, he has just received the official result of the second round. Robert Picard, 74 years old, a retired chef and Antoine's greatest rival, has apparently received *exactly* as many votes as Antoine. Nevertheless, Antoine does not worry too much. After all, his party has recently nominated him for a prestigious post on the Assembly's *bureau*, surely he cannot be replaced by some inexperienced newcomer who might not even survive a full parliamentary term! Immediately, he calls in his secretary to draft a letter to his friend, the President of the National Assembly.

Nine months later, the recently elected National Assembly has already seen some dramatic political action. The prime minister is on a mission of modernizing the country's economy and pursues an agenda of controversial reforms. Being not much loved by the Assembly, he has just narrowly survived three motions of censure since the last elections. Frédéric Angelis, a veteran member for the communist party, is currently gathering support for another motion of censure. He and the 62 other members who had signed the previous motions are convinced that they can now, finally, generate sufficient support to bring down this government. After that, the President of the Republic, a conservative, will have no other choice but to appoint Charles Marcus, the leader of the socialists, as the new Prime Minister.

Meeting 7: France

Keywords: legislation, competence, government intervention, Senate, promulgation

Task 4: Law-making

Note: when analysing the scenario, the focus of the discussion should be whether the positions taken and the actions carried out by the actors are in accordance with the constitution.

PARIS – This morning the French government introduced in the National Assembly its much-disputed employment reform bill. “Unemployment in our country is too high, because our labour market is too rigid,” the Prime Minister stated in a speech before the plenary. “This reform will allow employers to try out young workers before employing them on a permanent basis. It will encourage them to hire more young and low-skilled workers.” The bill, and the Prime Minister’s speech, immediately caused a heated debate.

The leftist opposition denounced the government’s plans as ultra-liberal. “Every young university graduate is entitled to a lifetime of job security, preferably in the public sector,” argued Charles Lafitte of the Communist Party. “The Assembly may not give its approval to such a treacherous law.” The Prime Minister dryly responded that if the parliamentarians did not want the law, they should try and bring down the cabinet.

Apart from the employment reform bill, the government also introduced a new bill to modernize the national school curriculum. In particular, the teaching of science as well as foreign languages is to be promoted. Pierre Haye de Sièque, chairman of the cultural affairs committee, promptly put forward a list of seventeen amendments to the bill. The Prime Minister however insisted that the bill be voted upon without any amendments. “The bill is fine as it is,” he noted. “Take it or leave it.”

François Clicquot, a senior member of the Senate, already announced that neither the employment reform nor the education bill will pass through the Senate in their current form. Yet the Prime Minister remains uncompromising. “The President and the National Assembly majority have been elected with a mandate to pursue a reform agenda. The Senate will not stop this much-needed legislation,” he told the press. “Too many of our compatriots are out of a job. France needs to open up her labour market, and she deserves to have a modern and well-educated labour force.”

Meeting 8: United Kingdom

Keywords: government formation, parliamentary system, legislation, constitutional reform

Task 1: Questions

Constitutionally speaking, what kind of a country is the United Kingdom?

Does it have territorial sub-units? What are they, how many are there?

What are the sources of the UK Constitution?

What are the main government institutions in the UK?

How and for how long are they elected / appointed?

How can they be removed? By whom?

What are their functions and their competences?

How do they relate to one another?

How can the UK Constitution be changed?

What is the Human Rights Act?

What is devolution?

Task 2: Comparative Questions

What is the difference between decentralisation and devolution?

In which legal systems is it possible to oust a single Minister?

What are the differences in the ministerial accountability mechanisms in France, Germany and the UK?

What are the differences in election systems for the lower chambers of France and the UK?

Who is, in your view, more powerful in relative terms: the UK Prime-Minister or the US President?

Meeting 9: United Kingdom

Keywords: parliamentary sovereignty, devolution, statute and common law, implied repeal

Task 3: Devolution

Note: when analysing the scenario, the focus of the discussion should be whether the positions taken and the actions carried out by the actors are in accordance with the constitution.

LONDON – Last week the House of Commons passed two controversial new bills. With the Schooling Act, Westminster would bring the schooling regime of Scotland, including the teaching of Gaelic, back in line with that of the rest of the UK. William Wilson of the Scottish National Party is outraged. “Scotland has been given freedom in schooling matters in the course of the devolution process,” he argued yesterday at a plenary session of the Scottish Parliament in Edinburgh. “This new law is in clear violation of the Scotland Act 1998.”

Meanwhile, Lord Usher, member of the House of Lords, is critical about the detailed regulation of the school curriculum in the bill. He stresses that schools should have autonomy in setting their own curriculum, provided that pupils pass standardized national tests. “As it is, this bill shall not receive the approval of the Lords,” he told the press.

Westminster also passed a bill for a new Contracts (Formation) Act, providing that a contract is deemed accepted if the offering party has received the letter of acceptance, not when the acceptor has posted the letter. “This is most astonishing,” remarks Arthur P. Gordon, a judge at the High Court. “This statute would be in conflict with two hundred years of established case-law.”

Meeting 10: Netherlands

Keywords: government formation, negative confidence rule

Task 1: Questions

Constitutionally speaking, what kind of a country is the Netherlands?
Does it have territorial sub-units? What are they, how many are there?
What are the main government institutions in the Netherlands?
What different branches of government are there?
How and for how long are they elected / appointed?
How can they be removed? By whom?
What are their functions and their competences?
How do they relate to one another?
What are the steps of the Government formation?

Task 2: Comparative questions

In which legal systems is it possible to oust a single Minister?
What are the differences in the ministerial accountability mechanisms in France, Germany, the UK and the Netherlands?
Which head of State has most powers with regard to law-making?
Compare the Dutch Senate with the other upper chambers discussed in terms of their legislative power.
What would the Netherlands have to change in order to become federal?

Meeting 10 (continued): Netherlands

Keywords: legislative procedure, initiative, Council of State, First Chamber, judicial review

Task 3: Lawmaking

Note: when analysing the scenario, the focus of the discussion should be whether the positions taken and the actions carried out by the actors are in accordance with the constitution.

THE HAGUE – The Dutch minister of justice today announced that he will launch a new bill amending the criminal code. The bill would increase by one-third the maximum penalty for criminal offences if they have been committed by foreigners. “If you are a guest in a country, you should behave like a good guest,” the minister told the press. “It is a very serious problem that foreigners abuse our country’s hospitality, but are then treated as if they were regular Dutch citizens.”

The vice-president of the Council of State understands the minister’s reasoning, but has great reservations on the details. “The scope of the bill as I see it now seems too broad,” he noted in an interview. “Right now there is no distinction between legal immigrants and illegal immigrants, or between EU citizens and third country nationals. I do not want to pre-empt the decision of the Council of State, but the way I see it, the bill should be either amended or withdrawn.” The minister responded that he would look into some of the points the vice-president raised, but that he is nevertheless determined to introduce the bill in the Second Chamber of parliament.

Gerard van Geldorp, the chairman of the Second Chamber’s justice committee, predicts that the bill might have sufficient support in the plenary. “However many of my colleagues argue that the bill is too harsh. To secure overall approval in the Chamber, I believe the added penalty should be lowered from one-third to one-quarter of the existing maximum penalty.”

Meanwhile, Hans Heeze, a newly elected Green member of the First Chamber, wonders about the course of procedure. “The minister should first introduce the bill to the First Chamber, not the Second Chamber,” he noted at a meeting of his party group. “It is only logical that the First Chamber comes first, and the Second Chamber comes second.” His colleague, the Social-Liberal Ria Roermans, furthermore raises substantive issues. “If the bill passes the Second Chamber in its current form, I will insist that the bill be amended, so that added penalties would not apply to all crimes but only to violent crimes. And if the government and the Second Chamber would not listen, then the First Chamber should just kill the bill and initiate a new one on its own.”

Human-rights groups have already criticized the minister’s initiative. Wouter Weert, a human-rights activist, argues that the law would violate the Dutch constitution. “Everyone should be treated equally, that is the first Article in our constitution,” he told the press. “The judges in our country should refuse to sentence people under the new law, as the new law is unconstitutional.”

Meeting 11: Judicial Review

Keywords: constitutional human rights

Task 1: Judicial Review of Legislation

BONN – Johannes B., a local activist, is today facing trial at a court in Bonn. He is charged with the publication of an anti-Muslim leaflet that is deemed in violation of a statutory provision prohibiting incitement to racial hatred. The defendant argues that the law infringes upon his human rights. The court will decide on the further proceedings after today's hearing.

BIRMINGHAM – John B., a local activist, is today facing trial at a court in Birmingham. He is charged with the publication of an anti-Muslim leaflet that is deemed in violation of a statutory provision prohibiting incitement to racial hatred. The defendant argues that the law infringes upon his human rights. The court will decide on the further proceedings after today's hearing.

BORDEAUX – Jacques B., a local activist, is today facing trial at a court in Bordeaux. He is charged with the publication of an anti-Muslim leaflet that is deemed in violation of a statutory provision prohibiting incitement to racial hatred. The defendant argues that the law infringes upon his human rights. The court will decide on the further proceedings after today's hearing.

BREDA – Jan B., a local activist, is today facing trial at a court in Brada. He is charged with the publication of an anti-Muslim leaflet that is deemed in violation of a statutory provision prohibiting incitement to racial hatred. The defendant argues that the law infringes upon his human rights. The court will decide on the further proceedings after today's hearing.

Questions:

Can the four defendants invoke their Constitution to escape criminal liability?

What would be the consequence of a successful human-rights claim?

Meeting 11 (continued): Human Rights

Keywords: domestic effect of the ECHR

Task 2: Human Rights Review

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Questions:

What is the difference between monism and dualism with respect to treaties?

Can the four defendants invoke the European Convention on Human Rights to escape criminal liability?

If compared to the results you discussed in task 11, for each of the four defendants, would it be more convenient to rely on the Constitution or on the ECHR?

Meeting 12 (final meeting): Human Rights

Keywords: European Court of Human Rights, admissibility, remedy

Task 3: The Strasbourg Mechanism

STRASBOURG – The European Court of Human Rights has today received several new complaints from individual applicants.

Ahmed A. has been arrested and detained by French police earlier this year. He claims that he has been subjected to physical abuse while in custody. He is not very hopeful about his case, though, since he is a Lebanese national, and Lebanon is not a European country and has not signed the ECHR.

Barbara B., a Hungarian national, had her telephone tapped by the police in the course of an investigation. Two months ago, the police acknowledged that their actions had not been authorized. B. accepted their apologies along with full financial compensation, but still wishes to make a point in Strasbourg.

Carlo C., an Italian farmer, had a part of his land expropriated for the construction of a new municipal road. He claims that the compensation he received two weeks ago was far below market value. He decided to immediately launch a case in Strasbourg, arguing that the Italian courts would take too long to decide on his case.

Daan D., a Dutch used-car salesman, was briefly detained pending an investigation into alleged tax fraud. The case was time-barred from prosecution, however, and he was released. When he applied for compensation for the time he had spent in detention, the court of appeal in Den Bosch rejected the claim, arguing that if the investigation had been completed, he would have certainly been found guilty. Eight months ago, the Dutch Supreme Court rejected his claim in final instance.

Erwin E., a German school teacher, was refused access to a disco for wearing sandals in combination with white tennis socks. He complains that he has been discriminated against, and the German courts would keep rejecting his claims.

Fiona F., a British journalist, was sentenced by a court to a fine of GBP 500 for a violation of laws on the protection of ethnic minorities, after she had published a newspaper article that was considered racist. She demands that the Strasbourg Court declare invalid the relevant law and have her criminal record cleared accordingly.

Questions:

When was the European Court of Human Rights set up? How was it set up?

How is the Court composed? What are its competences?

Are the complaints of the above applicants admissible?