



European**LEFT**



## **Comparison of the constitutions of selected Member States of the European Union**

Rule of law and social state principle, economic model and obstacles to military intervention

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# HOW RIGHTS SUFFERED A STROKE IN 1989 AND THE RECOVERY PROCESS

## Preliminary remarks on a synopsis of national constitutions

### The state, the class struggle and the formation of ideology

In 1989, the labour movement in many parts of the world suffered a kind of stroke. For our convalescence, the challenge is to find new creative ways to draw on the wisdom of the old and more recent classical theorists.

In the case of Louis Althusser, for example, his concept of 'ideological state apparatuses' may initially seem like an alien and stationary means of expressing the way in which, in the common structure of bourgeois rule, bourgeois forms of government and authority are etched on people's consciousness in practice. Marx refers to history as the history of class struggles<sup>1</sup>, but even before the 1989 stroke this perception had not dug a direct route into the subjective, into the formation of personality. The study of ideology per se is still in its youth, just as it was before 1989, as is the study of the culture of rights and of the devious routes by which the state reaches into the unconscious mind, as Freud defines the subconscious memories from childhood, in other words the parts of the mind unaffected by working life, and in the conscious existence of working people, whose personalities are marked by awareness of what Marx referred to as 'class in itself' or by what Lenin called 'trade-unionist consciousness'. It was Lucien Sève in the mid-1970s who categorically integrated labour into the psychology of personality in the theoretical battleground between the state and ideology.

The term 'ideological state apparatuses' as a descriptor of those eminently ideological markers that the state applies to working life from the cradle to the grave may seem a somewhat too forceful way to define what Marx calls the prevailing conditions within which people make their history. Yet Althusser's identification of the state hegemony over the intellectual life of workers prevents us from becoming bourgeois idolaters of free will; both he and Lucien Sève saw training for work as a time of life when the state engages in significant 'shaping'. This is only logical, for in Marxist eyes, after all, a person's work and the way in which his or her mind is metabolised by contact with the forces of production is more likely to determine the development of that individual's personality than Freudian unconscious memories from early childhood.

From their reading of Marx, some Marxists had derived a form of determinism in which the perceived laws of history prompted them to recommend disregarding what writers such as György Lukács and Ágnes Heller regard as subjective and as the reflection and driving force of the various class struggles. In far too many cases, this simplified interpretation of the subjection of history to laws has resulted in unreflecting re-education. The centralism of the vanguard, based on the premise that there was a historical process and that this process had been properly understood from the outset, became a paramilitary drill. Even those anti-Communists who had been converted away from Comintern dogma, such as Herbert Wehner and even some sections of the Communists' successor parties, nevertheless held fast to the old methodology of dictatorial centralism.

Lucien Sève kindled a brief theoretical debate by extending the articulation of personality development and Marxism to include the subjective dimension. He did this with the concept of labour producing and defying logic and brought consciousness and 'prevailing conditions' into dialectical harmony. These, however, also included the prevailing legal conditions as factors that shape consciousness. Sève refers to Nicos Poulantzas' quest for a democratic 'culture of rights', because the predominant conflicting ideologies of rights – that of the authoritarian state and that of liberation – are both impressed on the minds of working people, which also makes them significant factors of real social ferment and class struggle.



### Linkage to existing rights

Anyone, then, who aspires to be an opinion leader, be it only on individual issues, in other words who strives for that elementary precondition of cultural hegemony posited by Antonio Gramsci, must address the prevailing body of law. And this brings us German Marxists to Wolfgang Abendroth, who, as a critical observer of the Basic Law, was foremost in identifying the dimension of the evolution of our Constitution and its application and legal culture from which social welfare standards and workers' rights, and indeed the general reality of the rule of law as a fragile safeguard for the exploited, have been developed in detail. I would go so far as to assert that the modern German labour movement, even though it may no longer exist today or may not yet have re-created itself, would have been inconceivable and would now be undefinable without Abendroth.

All of these contributions, that is to say from Gramsci, Althusser, Poulantzas and Abendroth, are ultimately retraceable to the few recorded remarks on this subject from Marx and Engels (Marx died before he could write his projected fourth volume of *Das Kapital*, which was to deal with the state and the formation of monopolies). Among other things, they

<sup>1</sup> "The history of all hitherto existing society is the history of class struggles": Karl Marx and Friedrich Engels, *Manifesto of the Communist Party*, Chapter I.





focus on a modern Socialist relationship with the bourgeois culture of rights.

When Rosa Luxemburg, at the founding Congress of the KPD, the Communist Party of Germany, in 1919, defended her minority position in favour of participation in the bourgeois national elections, she unexpectedly stated in the course of a discussion that the October Revolution had not taken only a few weeks but had actually lasted for twelve years. The revolutionary had thus seen that revolution as a lengthy process of transition, albeit retrospectively. We must regard revolutions from the outset as a long transitional struggle.

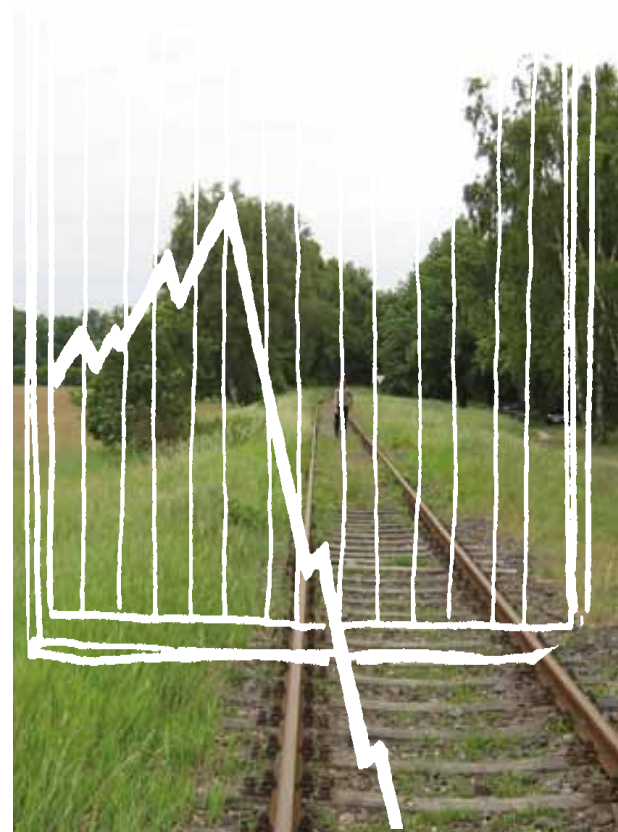
Marx himself had celebrated the Ten Hours Bill, which culminated in the Factory Act 1847, limiting the working day for British factory workers, as the birth of Socialism. For Lenin, the German postal service was an elementary economic model for non-monopolistic – or post-monopolistic – democracy. The institutional starting points within the system of bourgeois rule for a workers' democracy were therefore equally important in the eyes of our classical theorists as they have been to the younger philosophers and strategists who emerged after Gramsci. Without their ideas it is difficult to imagine, let alone produce, a generation of Socialists and of Socialism with a Western European flavour. The real jewel in the crown is a sentence written by Friedrich Engels in his introduction to Marx's work *The Class Struggles in France* in which he states that the working classes, by continuing to operate within the bounds of bourgeois legality, "get firm muscles and rosy cheeks".<sup>2</sup> This shows us that the labour movement must defend those very laws which the bourgeoisie churn out as temporary expedients or permanent arrangements, whether for carefully considered or misguided reasons. At the same time, the bourgeoisie is a constellation in conflict with itself, and its weaker part – small

*"The irony of world history turns everything upside down. We, the 'revolutionaries', the 'rebels' — we are thriving far better on legal methods than on illegal methods and revolt. The parties of order, as they call themselves, are perishing under the legal conditions created by themselves. They cry despairingly with Odilon Barrot: la légalité nous tue, legality is the death of us; whereas we, under this legality, get firm muscles and rosy cheeks and look like eternal life. And if we are not so crazy as to let ourselves be driven into street fighting in order to please them, then nothing else is finally left for them but themselves to break through this legality so fatal to them." Friedrich Engels, introduction to Karl Marx's *The Class Struggles in France – 1848 to 1850*, Berlin, 1895*

and medium-sized enterprises, for example – may, with the aid of the labour movement and together with it, be able to restore its hegemony within the bourgeoisie in this transition, for instance in the context of campaigns for new individual laws.

In the present day, with its modern productive forces, this is unlikely to manifest itself in the same configuration in which the bourgeoisie secured its place in the history of hegemony on the backs of the working class in 1789. Today it may be assumed that a democratic dictatorship of the proletariat without sections of the bourgeoisie will long remain impossible and unthinkable. Nevertheless, the law will still be the battleground, because every collective agreement and every social standard must be enshrined in legislation. And in this respect the developed institutions of the EU simply lack the history, the critical legal awareness and the requisite organic growth that would make it in any way possible for Abendroth's culture of the welfare state and Poluantzas' culture of the rule of law to play a part in the formation of working-class opinion as described by Gramsci.

The quote from Engels also implies that the labour movement must compel the bourgeoisie to embrace its own democratic rule of law and its welfare-state principles for the sake of creating the conditions for the workers' own struggle but also for the sake of cohesion and democracy in general, without which neither the dangers emanating from Islamist terrorism nor the potentially decivilising collateral damage from migratory movements would not even be addressable, let alone manageable. In this respect the struggle to democratise the EU institutions is not to be regarded as some kind of false beard affixed to the real class struggles but a struggle for improved elementary conditions for the labour movement and for its fight for social rights.





**“The struggle of the proletariat is at first a national struggle”<sup>3</sup>**

It is crucial not to make a major error against which both the aforementioned younger and older classical theorists have all sounded warnings, namely the subjugation of the national battleground to what Bertolt Brecht called ‘barren cosmopolitanism’ – the battle cry of ‘no borders, no nations’ and what the imperialists try to sell us as ‘Europeanisation’. Calls for existing rights to be deregionalised and denationalised and established at the level of the EU were once the battle cry of left-wing radicals and anarchists but have now become the neo-liberal war cry.

Some of the essential social rights for the EU institutions to establish are rights which have to be secured for the first time. If they are based on the existing welfare state, however, they must not be secured at the expense of prevailing national standards; on the contrary, the latter must ideally be sublated – in the Hegelian sense – into European law. Where this cannot be achieved, for as long as the forces for change are insufficient, it would be suicidal, of course, to renounce national social standards just because the neo-liberal propaganda machine decries as anti-European the preservation of rights such as those enshrined in Articles 14 and 15 of the German Constitution or the right of collective bargaining and the right to strike.

In truth, German nationalism has only covered itself in the cloak of the EU institutions, applied a thin layer of social cosmetics and procured a mainstream of Eurocentric political correctness so as to enable its conglomerates to exercise their power by tearing down national and regional borders wherever social resistance and democratic standards still stand in the way of extra profits.

Welfare and pay standards as well as democratic checks and balances are legal guarantees derived from regional and national legislation. In other words, like the prohibition of wars of aggression and the corresponding parliamentary veto on military deployments, they are not in any way bestowed on us by the EU, the more so as this democratic legal standards of national constitutions depict a reply on the fascisms in each of this countries. As they figure the constellation of powers, which they reflect and complain. To challenge the economic superiority of those corporations and high street banks, that once financed with the Harzburger Front in Germany their Mussolinis, Hitlers, Francos and Salazars some national constitutions are receptive to a non-monopolistic alternative.

In Germany it is Art. 15 GG. It says: “Land, natural resources and means of production may for the purpose of socialisation be transferred to public ownership or other forms of public enterprise by a law that determines the nature and extent of compensation. With respect to such compensation the third and fourth sentences of paragraph (3) of Article 14 shall apply *mutatis mutandis*”

Paragraph 9 of the preamble of the French constitution formulates as follows: “All property and all enterprises that have or that may acquire the character of a public service or *de facto* monopoly shall become the property of society.”

Very broad statements are written down in the Italian constitution Article 41et seq.: “The law shall provide for appropriate programmes and controls so that public and private-sector economic activity may be oriented and co-ordinated for social purposes.” (Art. 41 par. 3)

“For the purposes of the common good, the law may establish that an enterprise or a category thereof

<sup>3</sup> “Though not in substance, yet in form, the struggle of the proletariat with the bourgeoisie is at first a national struggle. The proletariat of each country must, of course, first of all settle matters with its own bourgeoisie.” Karl Marx and Friedrich Engels, *Manifesto of the Communist Party*, Chapter I.



be, through a pre-emptive decision or compulsory purchase authority with provision of compensation, reserved to the Government, a public agency, a workers' or users' association, provided that such enterprise operates in the field of essential public services, energy sources or monopolies and are of general public interest." (Art. 43)

"For the purpose of ensuring the rational use of land and equitable social relationships, the law imposes obligations and constraints on private ownership of land; (...)" (Art 44 par. 1)

"The Republic encourages and safeguards savings in all forms. It regulates, co-ordinates and oversees the operation of credit. The Republic promotes house and farm ownership and direct and indirect shareholding in the main national enterprises through the use of private savings." (Art. 47)

The Portuguese constitution entails following sections regarding the option of socialisation:

Article 80: Fundamental principles:

Society and the economy shall be organised on the basis of the following principles:

a. Economic power shall be subordinated to democratic political power;

d. When so required by the public interest, natural resources and the means of production shall be publicly owned;

Article 81: Primary duties of the state:

In the economic and social field the state shall be under a primary duty:

h. To eliminate very large estates and restructure small farms;

Article 83: Requirements for compulsory purchase: The law shall lay down the means and forms of inter-

vention in relation to, and for the public compulsory purchase of, means of production, together with the criteria for setting the applicable compensation.

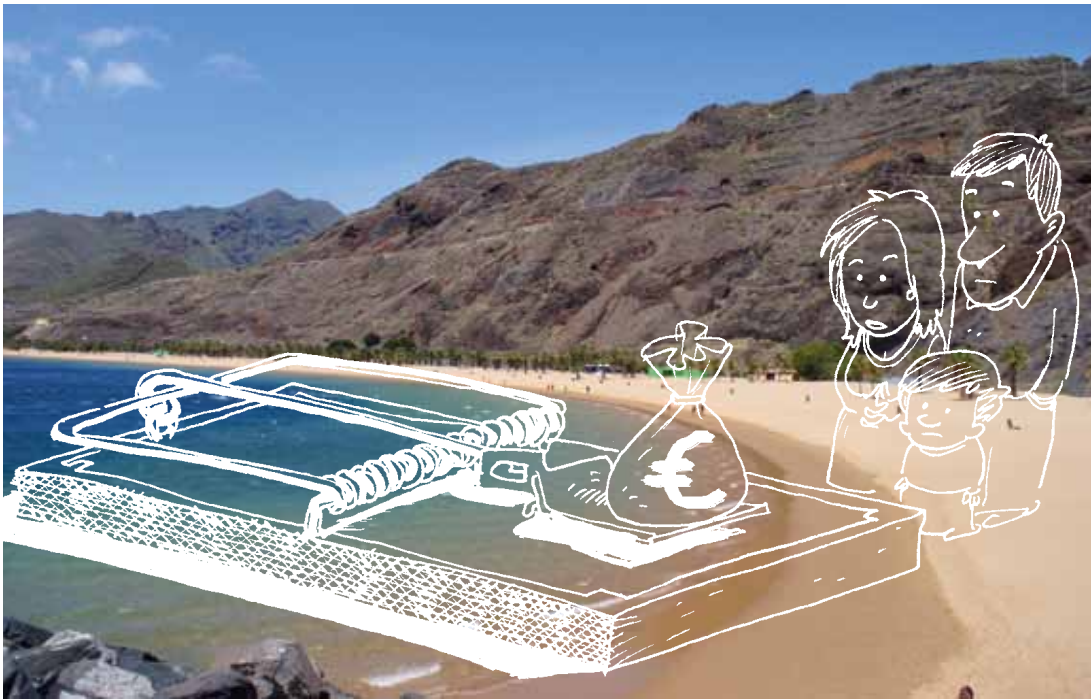
The Dutch constitution governs the socialisation under specific circumstances, too: "Expropriation may take place only in the public interest and on prior assurance of full compensation, in accordance with regulations laid down by or pursuant to Act of Parliament." (Art. 14)

In the Greece constitution it is stated as follows: "Property is under the protection of the State; rights deriving therefrom, however, may not be exercised contrary to the public interest. No one shall be deprived of his property except for public benefit which must be duly proven, when and as specified by statute and always following full compensation corresponding to the value of the expropriated property at the time of the court hearing on the provisional determination of compensation. In cases in which a request for the final determination of compensation is made, the value at the time of the court hearing of the request shall be considered." (Art. 17 par. 1 and 2)

As socialisation is no economic model in a narrow sense (in Germany the Federal Constitutional Court judged – valid until today – in accordance with Article 15 GG an entirely different economic model is eligible), this synopsis didn't ask for specific constitutional rules on socialisation.

Surrendering hard-won national rights or achievements of the local and regional authorities is tantamount to capitulation unless these rights have been enshrined at the next-higher level. At the same time, it is legitimate to apply the subsidiarity test to establish whether some rights would not be easier to oversee and shape if they were enshrined, or re-





mained enshrined, at the lower level rather than the higher supranational level.

It is certainly amazing to observe in some cases how quickly those who were singing the praises of regional energy and material cycles only a few years ago have now taken to branding a return to regionalism as reactionary and, eo ipso, to lauding more Europe as the progressive option. Nevertheless, the battle for the soul of the EU must be waged. But it must be waged with all forces mobilised, that is to say with the hard-won national rights.

#### **Internationalism is built on national peculiarities**

If our classical theorists were correct in their unanimous view that the various areas of the law are battlegrounds and that the battle itself spawns the growth of a legal culture on which Socialist aspirations can feed, then the legal conditions quite simply equate to the conditions for the struggle and the consciousness of the labour movement. It is on this basis that we present the following study, which my team and I

have prepared jointly with the Research Services of the German Bundestag.

We intend to attempt a synoptic comparison of the three main points of the post-fascism and anti-fascist elements of the Constitutions under examination. The subject areas in question are the welfare state, the democratic rule of law and separation of powers and the prohibition of wars of aggression and the corresponding right of parliaments to veto or approve decisions on military deployments.

We commend this synopsis for sympathetic critical reading in the hope that it will also imbue its readers with productive pride in the consciousness of their own condition, or what is commonly called self-awareness. It is fashionable today for contributors to Sunday supplements to hold forth on 'constantly reinventing ourselves.' Following the collective stroke of 1989 that blocked access to acquired knowledge, the more modest objective for the labour movement may well be simply to keep rediscovering ourselves.



# Comparison of the constitutions of selected Member States of the European Union

## Rule of law and social state principle, economic model and obstacles to military intervention

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### Introduction

The question asked is what rules do the constitutions of selected Member States of the European Union (EU) lay down with regard to the rule of law principle, the social state principle, economic model, and obstacles to military intervention?

The text that follows attempts to answer this question by comparing the constitutions of the Federal Republic of Germany, the French Republic, the Kingdom of the Netherlands, the Italian Republic, the Kingdom of Spain, the Portuguese Republic and the Hellenic Republic (Greece). The document is a purely textual analysis of some of the main indicators of the principles and areas of law in question, as reflected in the various constitutions, rather than a comprehensive legal comparison.



Presented as an overview, the text is based primarily and essentially on Verfassungen der EU-Mitgliedstaaten,<sup>4</sup> by Professor Adolf Kimmel and Dr. iur. Christiane Kimmel. Up-to-date (German) versions of the constitutions quoted in their book can be found on the web site Verfassungen der Welt.<sup>5</sup> This English text quotes from authoritative versions of the various constitutions available online in English (see list of links at end of text). Constitutional embodiment of the rule of law principle



### 2.1. Federal Republic of Germany

#### • Legal constraints on the power of the state (primacy of constitution and law)

Art. 20 para. 3 Basic Law: "The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice."

#### • Basic rights binding upon the state

Art. 1 para. 3 Basic Law: "The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law."

#### • Rules on the separation of powers between executive, legislature and judiciary

Art. 20 para. 2 Basic Law: "All state authority derives from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies."

#### • Independence of the judiciary and legal constraints on the administration of justice

Art. 97 para. 1 Basic Law: "Judges shall be independent and subject only to the law."

#### • Legal protection against public authority

Art. 19 para. 4, 1<sup>st</sup> sentence Basic Law: "Should any person's rights be violated by public authority, he may have recourse to the courts."

#### • Principle of a fair hearing as a general procedural guarantee

Art. 103 para. 1 Basic Law: "In the courts every person shall be entitled to a hearing in accordance with law."

#### • Guarantees under criminal procedural law

##### Principle of legality

Art. 103 para. 2 Basic Law: "An act may be punished only if it was defined by a law as a criminal offence before the act was committed."

##### Prohibition of double jeopardy

Art. 103 para. 3 Basic Law: "No person may be punished for the same act more than once under the general criminal laws."

##### Deprivation of liberty

Art. 104 para. 1, 1<sup>st</sup> sentence Basic Law: "Freedom of the person may be restricted only pursuant to a formal law and only in compliance with the procedures prescribed therein."



### 2.2. French Republic

#### • Primacy of the Constitution

Art. 5, 1<sup>st</sup> sentence: "The President of the Republic shall ensure due respect for the Constitution."

Art. 62 para. 1: "A provision declared unconstitutional on the basis of Article 61 shall be neither promulgated nor implemented."

#### • Secularism (laïcité)

Art. 1 para. 1, 1<sup>st</sup> sentence: "France shall be an indivisible, secular, democratic and social Republic."

#### • Basic rights binding upon the state

The Constitution as such does not give a list of basic rights. The preamble, however, makes reference inter alia to the 1789 Declaration of the Rights of Man and of the Citizen, which the French Constitutional Council ruled on 16 July 1971 to be at least constituent elements of the Constitution. Thus the French Constitution too effectively includes a catalogue of basic rights.<sup>6</sup>

#### • Rules on the separation of powers Executive

Art. 16, 1789 Declaration: "Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution."

Art. 20: "The Government shall determine and conduct the policy of the Nation. It shall have at its disposal the civil service and the armed forces. It shall

<sup>4</sup> Kimmel/Kimmel, in: *Verfassungen der EU-Mitgliedstaaten, (Constitutions of the EU Member States)* 6th expanded edition, 2005.

<sup>5</sup> <http://www.verfassungen.eu>.

<sup>6</sup> Vgl. Kimmel/Kimmel, in: *Verfassungen der EU-Mitgliedstaaten, (Constitutions of the EU Member States)* 6th expanded edition, 2005. Introduction, page XIV.



be accountable to Parliament in accordance with the terms and procedures set out in Articles 49 and 50.”

### Legislature

Art. 34 para. 1, 1<sup>st</sup> sentence: “Statutes shall determine the rules [concerning...]”.

### Judiciary

Art. 61 para. 1: “Institutional Acts, before their promulgation, Private Members’ Bills mentioned in Article 11 before they are submitted to referendum, and the rules of procedure of the Houses of Parliament shall, before coming into force, be referred to the Constitutional Council, which shall rule on their conformity with the Constitution.”

- **Independence of the judiciary**

Art. 64, 1<sup>st</sup> sentence: “The President of the Republic shall be the guarantor of the independence of the Judicial Authority.”

- **Guarantees under criminal procedural law**

Art. 5, 1789 Declaration: “The Law has the right to forbid only those actions that are injurious to society. Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain.”

### Deprivation of liberty

Art. 7, 1<sup>st</sup> sentence, 1789 Declaration: “No man may be accused, arrested or detained except in the cases determined by the Law, and following the procedure that it has prescribed.”

### Principle of legality

Art. 8, 1789 Declaration: “The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied.”

### Nulla poena sine culpa

Art. 9, 1789 Declaration: “As every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law.”

## 2.3. Kingdom of the Netherlands

- **Rules on the separation of powers**

### Executive

Art. 42 para. 1: “The Government shall comprise the King and the Ministers.”

Art. 42 para. 2: “The Ministers, and not the King, shall be responsible for acts of government.”

### Legislature

Art. 81: “Acts of Parliament shall be enacted jointly by the Government and the States General.

### Judiciary

Art. 112: “The adjudication of disputes involving rights under civil law and debts shall be the responsibility of the judiciary.”

Art. 113: “The trial of offences shall also be the responsibility of the judiciary.”

Art. 120: “The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.”

- **Guarantees under criminal procedural law**

### Deprivation of liberty

Art. 15 para. 1: “Other than in the cases laid down by or pursuant to Act of Parliament, no one may be deprived of his liberty.”

### Principle of legality

Art. 16: “No offence shall be punishable unless it was

an offence under the law at the time it was committed.”

## 2.4. Italian Republic

- **Primacy of constitution and law**

Art. 1 para. 2: “Sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the Constitution.”

Art. 117 para. 1: “Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.”

- **Rules on the separation of powers**

### Executive

Art. 92, 1<sup>st</sup> sentence: “The Government is made up of the President of the Council and the Ministers, who together form the Council of Ministers.”

Art. 95, 1<sup>st</sup> sentence: “The President of the Council conducts and holds responsibility for the general policy of the Government. [He] ensures the coherence of political and administrative policies, by promoting and co-ordinating the activity of the Ministers.”

### Legislature

Art. 70: “The legislative function is exercised collectively by both Houses.”

Art. 76: “The exercise of the legislative function may not be delegated to the Government unless principles and criteria have been established and then only for a limited time and for specified purposes.”

Art. 77, 1<sup>st</sup> sentence: “A Bill shall become an Act of Parliament once it has been passed by the States General [...]”.

### Judiciary

Art. 102, 1<sup>st</sup> sentence: “Judicial proceedings are exercised by ordinary magistrates.”

Art. 134: “The Constitutional Court shall pass judgement on controversies on the constitutional legitimacy of laws and enactments having force of law issued by the State and Regions [...]”.



- **Legal constraints on the administration of justice**  
Art. 101: “Justice is administered in the name of the people. Judges are subject only to the law.”

Art. 102, 1<sup>st</sup> sentence: “Judicial proceedings are exercised by ordinary magistrates empowered and regulated by the provisions concerning the Judiciary.”

- **Independence of the judiciary**

Art. 104, 1<sup>st</sup> sentence: “The Judiciary is a branch that is autonomous and independent of all other powers.”

Art. 108, 2<sup>nd</sup> sentence: “The law ensures the independence of judges of special courts, of state prosecutors of those courts, and of other persons participating in the administration of justice.”

- **Legal protection**

Art. 24, 1<sup>st</sup> sentence: “Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law.”

- **Guarantees under criminal procedural law**

*Principle of legality*

Art. 25, 2<sup>nd</sup> sentence: “No punishment may be inflicted except by virtue of a law in force at the time the offence was committed.”

*Nulla poena sine culpa*

Art. 27, 2<sup>nd</sup> sentence: “A defendant shall be considered not guilty until a final sentence has been passed.”

*Deprivation of liberty*

Art. 13, 2<sup>nd</sup> sentence: “No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law.”



## 2.5. Kingdom of Spain

- **Basic commitment to the rule of law**

Section 1, 1<sup>st</sup> sentence: “Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system.”

- **Legal constraints on the power of the state**

(primacy of constitution and law)

Section 9 para. 1: “Citizens and public authorities are bound by the Constitution and all other legal provisions.”

Section 97: “The Government shall conduct domestic and foreign policy, civil and military administration and the defence of the State. It exercises executive authority and the power of statutory regulation in accordance with the Constitution and the laws.”

- **Respect for the law as the basis of political order**

Section 10 para. 1: “The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace.”

- **Rules on the separation of powers**

**Executive**

Section 97: “The Government shall conduct domestic and foreign policy, civil and military administration and the defence of the State. It exercises executive authority and the power of statutory regulation in accordance with the Constitution and the laws.”

**Legislature**

Section 66 para. 2: “The Cortes Generales exercise the legislative power of the State and adopt its Budget, control the action of the Government and have the other competences assigned by the Constitution.”



Section 82 para. 1: “The Cortes Generales may delegate to the Government the power to issue rules with the force of an act of the Parliament on specific matters not included in the foregoing section.”

**Judiciary**

Section 117 para. 1: “Justice emanates from the people and is administered on behalf of the King by judges and magistrates, members of the Judicial Power [...]”

- **Independence of the judiciary and legal constraints on the administration of justice**

Section 117 para. 1: “Justice emanates from the people and is administered on behalf of the King by judges and magistrates, members of the Judicial Power, who shall be independent, shall have fixity of tenure, shall be accountable for their acts and subject only to the rule of law.”

- **Legal protection**

Section 24 para. 1: “All persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defence.”

- **Guarantees under criminal procedural law**

*Deprivation of liberty*

Section 17 para. 1, 2<sup>nd</sup> sentence: “No one may be deprived of his or her freedom except in accordance with the provisions of this section and in the cases and in the manner provided for by the law.”

Section 24 para. 2, 1<sup>st</sup> sentence: “Likewise, all have the right to the ordinary judge predetermined by law; to defence and assistance by a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defence; not to make self-incriminating statements; not to plead themselves guilty; and to be presumed innocent.”



### *Principle of legality*

Section 25 para. 1: “No one may be convicted or sentenced for actions or omissions which when committed did not constitute a criminal offence, misdemeanour or administrative offence under the law then in force.”



## 2.6. Portuguese Republic

### • Legal constraints on the power of the state

(primacy of constitution and law)

Art. 3 para. 2: “The state is subject to the Constitution and is based on democratic legality.”

Art. 3 para. 3: “The validity of laws and other acts of the state, the autonomous regions, local government and any other public entities is dependent on their conformity with the Constitution.”

### • Basic rights to be safeguarded

Art. 18 para. 1: “The constitutional precepts with regard to rights, freedoms and guarantees are directly applicable to and binding on public and private entities.”

### • Rules on the separation of powers between executive, legislature and judiciary

Art. 2: “The Portuguese Republic is a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and political organisation, respect for and the guarantee of the effective implementation of the fundamental rights and freedoms, and the separation and interdependence of powers [...]”

Art. 111: “The entities that exercise sovereignty must respect the separation and independence laid down in the Constitution.”

### • Independence of the judiciary and legal constraints on the administration of justice

Art. 203: “The courts are independent and subject only to the law.”

### • Legal protection

Art. 20 para. 1: “Everyone is guaranteed access to the law and the courts in order to defend those of his rights and interests that are protected by law [...]”

### • Guarantees under criminal procedural law

#### *Deprivation of liberty*

Art. 27 para. 2: “No one may be wholly or partially deprived of their freedom, except as a consequence of a judicial conviction and sentence imposed for the practice of an act that is legally punishable by a prison term or the judicial imposition of a security measure.”

#### *Principle of legality*

Art. 29 para. 1: “No one may be sentenced under the criminal law unless the action or omission in question is punishable under a pre-existing law [...]”

Art. 29 para. 3: “No sentence or security measure may be applied unless it is expressly sanctioned by a pre-existing law.”

#### *Prohibition of double jeopardy*

Art. 29 para. 5: “No one may be tried more than once for commission of the same crime.”



## 2.7. Hellenic Republic

### • Primacy of the Constitution

Art. 1 para. 3: “All powers derive from the People and exist for the People and the Nation; they shall be exercised as specified by the Constitution.”

### • Rules on the separation of powers between executive, legislature and judiciary

Art. 26 para. 1: “The legislative powers shall be exercised by the Parliament and the President of the Republic.”

Art. 26 para. 2: “The executive powers shall be exercised by the President of the Republic and the Government.”

Art. 26 para. 3: “The judicial powers shall be exercised by courts of law, the decisions of which shall be executed in the name of the Greek People.”

### • Independence of the judiciary and legal constraints on the administration of justice

Art. 87 para. 1: “Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence.”

Art. 87 para. 2: “In the discharge of their duties, judges shall be subject only to the Constitution and the laws; in no case whatsoever shall they be obliged to comply with provisions enacted in violation of the Constitution.”

### • Legal protection

Art. 20 para. 1: “Every person shall be entitled to receive legal protection by the courts and may plead before them his views concerning his rights or interests, as specified by law.”

### • Fair hearing

Art. 20 para. 2: “The right of a person to a prior hearing also applies in any administrative action or measure adopted at the expense of his rights or interests.”

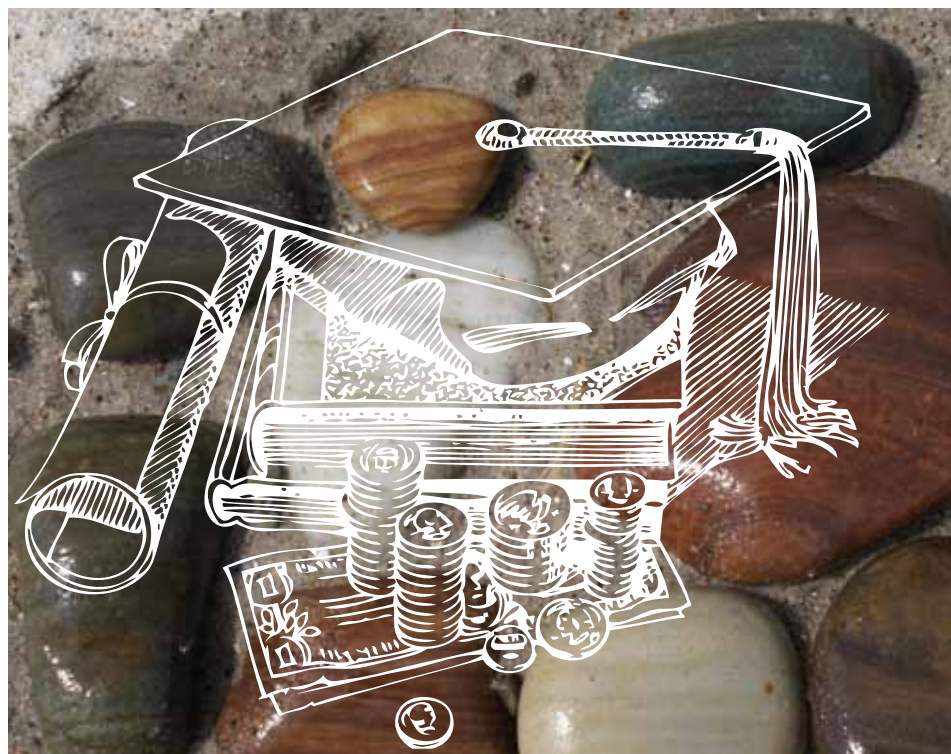
### • Guarantees under criminal procedural law

#### *Deprivation of liberty*

Art. 6 para. 1, 1<sup>st</sup> sentence: “No person shall be arrested or imprisoned without a reasoned judicial warrant which must be served at the moment of arrest or detention pending trial [...]”

#### *Principle of legality*

Art. 7 para. 1, 1<sup>st</sup> sentence: “There shall be no crime, nor shall punishment be inflicted unless specified by law in force prior to the perpetration of the act, defining the constitutive elements of the act.”







### 3. Constitutional embodiment of the social state principle

#### 3.1. Federal Republic of Germany

##### • Social state principle

Art. 20 para. 1 Basic Law: “The Federal Republic of Germany is a democratic and social federal state.”

Art. 28 para. 1, 1<sup>st</sup> sentence Basic Law: “The constitutional order in the Länder must conform to the principles of a republican, democratic and social state governed by the rule of law, within the meaning of this Basic Law.”

##### • Guarantee of human dignity and a subsistence minimum

Art. 1 para. 1 Basic Law: “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.”

##### • Equality

Art. 3 para. 1 Basic Law: “All persons shall be equal before the law.”

Art. 3 para. 3 Basic Law: “No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.”

##### • Further social principles

###### *Maternal protection and welfare*

Art. 6 para. 4 Basic Law: “Every mother shall be entitled to the protection and care of the community.”

###### *Social obligations of property ownership*

Art. 14 para. 2 Basic Law: “Property entails obligations. Its use shall also serve the public good.”\*

#### 3.2. French Republic

##### • Social state principle

Art. 1, 1<sup>st</sup> sentence: “France shall be an indivisible, secular, democratic and social Republic.”

##### • Subsistence minimum for individuals and families

Preamble to the 1946 Constitution: “The Nation shall provide the individual and the family with the conditions necessary to their development.”

##### • Equality

Art. 1 para. 1, 2<sup>nd</sup> sentence: “It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion.”

##### • Further social principles of the Preamble to the 1946 Constitution:

###### *Employment*

Para. 5: “Each person has the duty to work and the right to employment.”

###### *Health, security, rest and leisure*

Para. 11, 1<sup>st</sup> sentence: “[The Nation] shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure.”

###### *Support for persons unable to work*

Para. 11, 2<sup>nd</sup> sentence: “All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society.”

###### *Education*

Para. 13, 1<sup>st</sup> sentence: “The Nation guarantees equal access for children and adults to instruction, vocational training and culture.”

#### Article 14

##### [Property – Inheritance – Expropriation]

(1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.

(2) Property entails obligations. Its use shall also serve the public good.

(3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.

#### Article 15

##### [Socialisation]

Land, natural resources and means of production may for the purpose of socialisation be transferred to public ownership or other forms of public enterprise by a law that determines the nature and extent of compensation. With respect to such compensation the third and fourth sentences of paragraph (3) of Article 14 shall apply mutatis mutandis.



### 3.3. Kingdom of the Netherlands

- **Social state principle**

The principle of the social state is not expressly enshrined in the Constitution.

- **Guarantee of a subsistence minimum**

Art. 20 para. 1: "It shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth."

- **Equality**

Art. 1, 1<sup>st</sup> sentence: "All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted."

- **Further basic social rights and principles:**

*Social security/assistance*

Art. 20 para. 2: "Rules concerning entitlement to social security shall be laid down by Act of Parliament."

Art. 20 para. 3: "Dutch nationals resident in the Netherlands who are unable to provide for themselves shall have a right, to be regulated by Act of Parliament, to aid from the authorities."

*Public health, housing and social development*

Art. 22 para. 1: "The authorities shall take steps to promote the health of the population."

Art. 22 para. 2: "It shall be the concern of the authorities to provide sufficient living accommodation."

Art. 22 para. 3: "The authorities shall promote social and cultural development and leisure activities."

*Education*

Art. 23 para. 1: "Education shall be the constant concern of the Government."



### 3.4. Italian Republic

- **Social state principle**

The principle of the social state is not expressly enshrined in the Constitution.

- **Social duty of the Republic**

Art. 3, 2<sup>nd</sup> sentence: "It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country."

- **Guarantee of a dignified existence**

Art. 36, 1<sup>st</sup> sentence: "Workers have the right to a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence."

- **Welfare**

Art. 38, 1<sup>st</sup> & 2<sup>nd</sup> sentences: "Every citizen unable to work and without the necessary means of subsistence is entitled to welfare support. Workers have the right to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment."

- **Equality**

Art. 3, 1<sup>st</sup> sentence: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions."

- **Further basic social rights and principles:**

*Right to work*

Art. 4, 1<sup>st</sup> sentence: "The Republic recognises the right of all citizens to work and promotes those conditions which render this right effective."

*Mother and child protection and welfare*

Art. 31, 2<sup>nd</sup> sentence: "[The Republic] protects mothers, children and the young by adopting necessary provisions."

Art. 37, 2<sup>nd</sup> sentence: "Working conditions must allow women to fulfil their essential role in the family and ensure appropriate protection for the mother and child."

*Guarantee of free medical care*

Art. 32, 1<sup>st</sup> sentence: "The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent."

*Education*

Art. 34: "Schools are open to everyone. [...] Capable and deserving pupils, including those lacking financial resources, have the right to attain the highest levels of education. The Republic renders this right effective through scholarships, allowances to families and other benefits, which shall be assigned through competitive examinations."



### 3.5. Kingdom of Spain

- **Social state principle**

Section 1 para. 1: "Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system."

- **Inviolability of the guaranteed subsistence minimum**

Section 10 para. 1: "The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace."

- **Guarantee of social security**

Section 41: "The public authorities shall maintain a public Social Security system for all citizens guaranteeing adequate social assistance and benefits in situations of hardship, especially in case of unemployment. Supplementary assistance and benefits shall be optional."

- **Equality**

Section 14: "Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance."

- **Further basic social rights and principles:**

*Right to work and a living wage*

Section 35 para. 1, 1<sup>st</sup> sentence: "All Spaniards have the duty to work and the right to work, to the free choice of profession or trade, to advancement through work, and to a sufficient remuneration for the satisfaction of their needs and those of their families."

*Mother and child protection*

Section 39 para. 2, 1<sup>st</sup> sentence: "The public authorities likewise ensure full protection of children, who are equal before the law, regardless of their parentage, and of mothers, whatever their marital status."

### *Right to housing*

Section 47 para. 1, 1<sup>st</sup> & 2<sup>nd</sup> sentences: “All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and establish appropriate standards in order to make this right effective [...]”

### *Pension and social benefits system*

Section 50: “The public authorities shall guarantee, through adequate and periodically updated pensions, a sufficient income for citizens in old age. Likewise, and without prejudice to the obligations of the families, they shall promote their welfare through a system of social services that provides for their specific problems of health, housing, culture and leisure.”



## 3.6. Portuguese Republic

### • **Social state principle**

The principle of the social state is not expressly enshrined in the Constitution.

### • **Respect for human dignity**

Art. 1: “Portugal is a sovereign Republic, based on the dignity of the human person and the will of the people and committed to building a free, just and solidary [sic] society.”

### • **Fundamental tasks of the state**

Art. 9: “The fundamental tasks of the state are: a) To guarantee national independence and create the political, economic, social and cultural conditions that promote it. [...]”

### • **Equality**

Art. 13 para. 1: “All citizens possess the same social dignity and are equal before the law.”

Art. 13 para. 2: “No one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.”

### • **Social security**

Art. 63 para. 1: “Everyone has the right to social security.”

Art. 63 para. 2: “The state is charged with organising, coordinating and subsidising a unified and decentralised social security system, with the participation of the trade unions, other organisations that represent workers and associations that represent the other beneficiaries.”

Art. 63 para. 3: “The social security system shall protect citizens in illness and old age and when they are disabled, widowed or orphaned, as well as when they are unemployed or in any other situation that entails a lack of or reduction in means of subsistence or the ability to work.”

### • **Further basic social rights and principles**

#### *Right to work*

Art. 58 para. 1: “Everyone has the right to work.”

#### *Health*

Art. 64 para. 2: “The right to the protection of health shall be fulfilled: a) By means of a universal and general national health service which, with particular regard to the economic and social conditions of the citizens who use it, shall tend to be free of charge [...]”

#### *Housing*

Art. 65 para. 1: “Everyone has the right for himself and his family to have an adequately sized dwelling

that provides hygienic and comfortable conditions and preserves personal and family privacy.”

### *Parenthood*

Art. 68 para. 1: “In performing their irreplaceable role in relation to their children, [...], fathers and mothers have the right to protection by society and the state.”

### *Social security for the elderly*

Art. 72 para. 1: “The elderly have the right to economic security and to conditions in terms of housing and family and community life that respect their personal autonomy and avoid and overcome isolation or social marginalisation.”

### *Education*

Art. 74 para. 1: “Everyone has the right to education, with the guarantee of the right to equal opportunities in access to and success in schooling.”

Art. 74 para. 2: “In implementing the education policy, the state is charged with: a) Ensuring universal, compulsory and free basic education: [...]”



## 3.7. Hellenic Republic

### • **Social state principle**

Art. 25 para. 1, 1<sup>st</sup> sentence: “The rights of the human being as an individual and as a member of the society and the principle of the welfare state rule of law are guaranteed by the State.”

### • **Respect for human dignity**

Art. 2 para. 1: “Respect and protection of the value of the human being constitute the primary obligations of the State.”

### • **Equality**

Art. 4 para. 1: “All Greeks are equal before the law.”

Art. 5 para. 2, 1<sup>st</sup> sentence: “All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs.”

### • **Further basic social rights and principles**

#### *Education*

Art. 16 para. 4, 1<sup>st</sup> sentence: “All Greeks are entitled to free education on all levels at State educational institutions.”

#### *Care for persons in special need of protection*

Art. 21 para. 2: “Families with many children, disabled war and peace-time veterans, war victims, widows and orphans, as well as persons suffering from incurable bodily or mental ailments are entitled to the special care of the State.”

#### *Healthcare*

Art. 21 para. 3: “The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy.”

#### *Housing*

Art. 21 para. 4: “The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care.”

#### *Right to work*

Art. 22 para. 1: “Work constitutes a right and shall enjoy the protection of the State, which shall care for the creation of conditions of employment for all citizens and shall pursue the moral and material advancement of the rural and urban working population.”





#### 4. Constitutional specification of an economic model

##### 4.1. Federal Republic of Germany

- **Express stipulation of a specific economic order**  
None, the Basic Law is “economically neutral”.<sup>7</sup>

- **Indicators of a specific economic order**  
Guarantee of a social market economy

- **Constitutional principles**  
Especially the principle of the rule of law and the social state (see above).

- **Basic rights with economic significance:**  
*Free development including in the economic sphere*  
Art. 2 para. 1 Basic Law: “Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.”

##### *Occupational freedom*

Art. 12 para. 1, 1<sup>st</sup> sentence Basic Law: “All Germans shall have the right freely to choose their occupation or profession, their place of work, and their place of training.”

##### *Property guarantee*

Art. 14 para. 1, 1<sup>st</sup> sentence Basic Law: “Property and the right of inheritance shall be guaranteed.”

##### *Freedom of association*

Art. 9 para. 3, 1<sup>st</sup> sentence Basic Law: “The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession.”

##### 4.2. French Republic

- **Express stipulation of a specific economic order**  
None.

- **Indicators of a specific economic order**  
Guarantee of a social market economy

- **Constitutional principles**  
Especially the principle of the rule of law and the social state (see above).

- **Property guarantee**  
Art. 17, 1789 Declaration: “Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.”

##### • **Economic principles in the Preamble to the 1946 Constitution**

###### *Work*

Para. 5: “Each person has the duty to work [...].”

###### *Trade unions*

Para. 6: “All men may defend their rights and interests through union action and may belong to the union of their choice.”

###### *Property*

Para. 9: “All property and all enterprises that have or that may acquire the character of a public service or de facto monopoly shall become the property of society.”

<sup>7</sup> Cf. BVerfG (Federal Constitutional Court) decisions 4, 7, 17f. (Investment Aid Act) and 50, 290, 338 (Co.determination Act).



#### 4.3. Kingdom of the Netherlands

- **Express stipulation of a specific economic order**  
None.

- **Indicators of a specific economic order**  
Guarantee of a social market economy.

- **Constitutional principles**

Especially the principle of the rule of law and the social state (see above).



#### 4.4. Italian Republic

- **Express stipulation of a specific economic order**  
None.

- **Indicators of a specific economic order**  
Guarantee of a social market economy.

- **Constitutional principles**

Especially the principle of the rule of law and the social state (see above) plus basic employment rights (Art. 35-40).

- **Basic rights with economic significance**

*Trade unions*

Art. 39, 1<sup>st</sup> sentence: "Trade unions may be freely established."

*Free enterprise*

Art. 41, 1<sup>st</sup> sentence: "Private economic enterprise is free."

*Property*

Art. 42, 3<sup>rd</sup> sentence: "Private property is recognised and guaranteed by the law [...]."

- **Economic principles and objectives**

*Pursuit of social objectives*

Art. 41, 3<sup>rd</sup> sentence: "The law shall provide for appropriate programmes and controls so that public and private-sector economic activity may be oriented and co-ordinated for social purposes."

*Nationalisation*

Art. 43: "For the purposes of the common good, the law may establish that an enterprise or a category thereof be, through a pre-emptive decision or compulsory purchase authority with provision of compensation, reserved to the Government, a public agency, a workers' or users' association, provided that such enterprise operates in the field of essential public services, energy sources or monopolies and is of general public interest."

*Restrictions on private land ownership*

Art. 44, 1<sup>st</sup> half-sentence: "For the purpose of ensuring the rational use of land and equitable social relationships, the law imposes obligations and constraints on private ownership of land; [...]."

*Wealth formation*

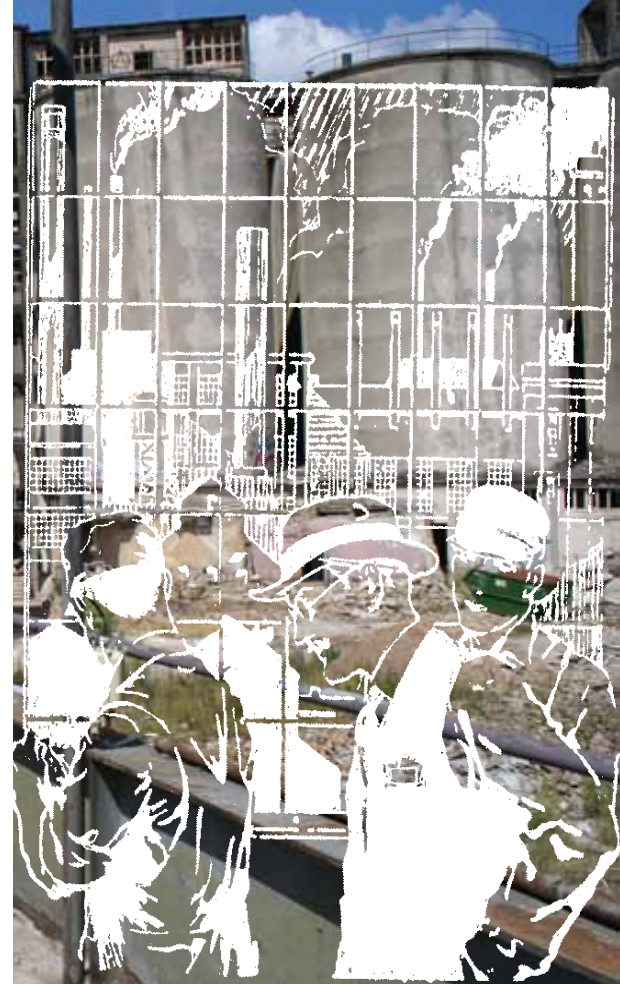
Art. 47: "The Republic encourages and safeguards savings in all forms. It regulates, co-ordinates and oversees the operation of credit. The Republic promotes house and farm ownership and direct and indirect shareholding in the main national enterprises through the use of private savings."



#### 4.5. Kingdom of Spain

- **Express stipulation of a specific economic order**  
The Constitution expressly mentions a market economy. Section 38, 1<sup>st</sup> sentence: "Free enterprise is recognised within the framework of a market economy."

- **Indicators of a specific economic order**  
Guarantee of a social market economy.



- **Constitutional principles**

Especially the principle of the rule of law and the social state (see above).

- **Basic rights with economic significance**

*Property*

Section 33 para. 1: "The right to private property and inheritance is recognised."

*Choice of occupation*

Section 35 para. 1, 1<sup>st</sup> sentence: "All Spaniards have the duty to work and the right to work, to the free choice of profession or trade [...]."

*Trade unions*

Section 7: "Trade unions and employers' associations contribute to the defence and promotion of the economic and social interests which they represent. Their creation and the exercise of their activities shall be free in so far as they respect the Constitution and the law. Their internal structure and their functioning must be democratic."

Section 28 para. 1, 1<sup>st</sup> sentence "All have the right to freely join a trade union."

- **Economic principles and objectives**

*Work*

Section 35 para. 1, 1<sup>st</sup> sentence: "All Spaniards have the duty to work [...]."

*Fair distribution of income and full employment*

Section 40 para. 1: "The public authorities shall promote favourable conditions for social and economic progress and for a more equitable distribution of regional and personal income within the framework of a policy of economic stability. They shall in particular carry out a policy aimed at full employment."

*Consumer protection*

Section 51 para. 1: "The public authorities shall guarantee the protection of consumers and users and shall, by means of effective measures, safeguard their safety, health and legitimate economic interests."





#### 4.6. Portuguese Republic

- **Express stipulation of a specific economic order**

None.

- **Indicators of a specific economic order**

Guarantee of a social market economy.

- **Constitutional principles**

Especially the principle of the rule of law and the social state (see above).

- **Basic rights with economic significance**

*Property*

Art. 62 para. 1: "Everyone is guaranteed the right to private property and to the transmission thereof in life or upon death, in accordance with the Constitution."

*Choice of occupation*

Art. 47 para. 1: "Everyone has the right to choose a profession or type of work freely, subject to the legal restrictions that are imposed in the collective interest or the restrictions that are inherent in a person's own capabilities." a) The implementation of full-employment policies; [...]"

*Trade unions*

Art. 55 para. 2: "In exercising the freedom to form, belong to and operate trade unions, workers are particularly guaranteed the following, without any discrimination: a) The freedom to form trade unions at every level; [...]"

- **Economic principles and objectives**

*Full employment*

Art. 58 para. 2: "In order to ensure the right to work, the state is charged with promoting: – a) The implementation of full-employment policies; [...]"

*Free enterprise*

Art. 80: "Society and the economy shall be organised on the basis of the following principles: [...] c) Freedom of entrepreneurial initiative and organisation, within the overall framework of a mixed economy; [...]"

*Public ownership*

Art. 80: "Society and the economy shall be organised on the basis of the following principles: [...] d) The public ownership of natural resources and the means of production, in accordance with the collective interest; [...]"



#### 4.7. Hellenic Republic

- **Express stipulation of a specific economic order**

None.

- **Indicators of a specific economic order**

Guarantee of a social market economy.

- **Constitutional principles**

Especially the principle of the rule of law and the social state (see above).

- **Economic activity of the country**

Art. 106 para. 1, 1<sup>st</sup> sentence: "In order to consolidate social peace and protect the general interest, the State shall plan and coordinate economic activity in the Country, [...]"

- **Restrictions on private enterprise**

Art. 106 para. 2: "Private economic initiative shall not be permitted to develop at the expense of freedom and human dignity, or to the detriment of the national economy."

- **Basic rights with economic significance**

*Free development including in the economic sphere*

Art. 5 para. 1: "All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages."

*Property*

Art. 17 para. 1: "Property is under the protection of the State; rights deriving therefrom, however, may not be exercised contrary to the public interest."

*Freedom of association*

Art. 23 para. 1: "The State shall adopt due measures safeguarding the freedom to unionise and the unhindered exercise of related rights against any infringement thereon within the limits of the law."







## 5. Constitutional obstacles to military intervention



### 5.1. Federal Republic of Germany

- **Express rules on military intervention**

Art. 87a para. 2 Basic Law: "Apart from defence, the Armed Forces may be employed only to the extent expressly permitted by this Basic Law."

- **Derived rules on military intervention**

Art. 24 para. 2 Basic Law: "With a view to maintaining peace, the Federation may enter into a system of mutual collective security; in so doing it shall consent to such limitations upon its sovereign powers as will bring about and secure a lasting peace in Europe and among the nations of the world."



### 5.2. French Republic

- **Express rules on military intervention**

Art. 35 para. 1: "A declaration of war shall be authorised by Parliament."

Art. 35 para. 2, 1<sup>st</sup> sentence: "The Government shall inform Parliament of its decision to have the armed forces intervene abroad, at the latest three days after the beginning of said intervention."

Para. 14 Preamble to the 1946 Constitution: "The French Republic, faithful to its traditions, shall respect the rules of public international law. It shall undertake no war aimed at conquest, nor shall it ever employ force against the freedom of any people."

- **Derived rules on military intervention**

Para. 15 Preamble to the 1946 Constitution: "Subject to reciprocity, France shall consent to the limitations upon its sovereignty necessary to the organisation and preservation of peace."



### 5.3. Kingdom of the Netherlands

- **Express rules on military intervention**

Art. 96 para. 1: "A declaration that the Kingdom is in a state of war shall not be made without the prior approval of the States General."

- **Derived rules on military intervention**

Art. 97 para. 1: "There shall be armed forces for the defence and protection of the interests of the Kingdom, and in order to maintain and promote the international legal order."



### 5.4. Italian Republic

- **Express rules on military intervention**

Art. 78: "Parliament has the authority to declare a state of war and vest the necessary powers into the Government."

- **Derived rules on military intervention**

Art. 11: "Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes. Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends."



### 5.5. Kingdom of Spain

- **Express rules on military intervention**

Section 63 para. 3: "It is incumbent upon the King, following authorisation by the Cortes Generales, to declare war and to make peace."

- **Derived rules on military intervention**

Section 94 para. 1 b: "The giving of the consent of the State to enter any commitment by means of treaty or agreement, shall require prior authorisation of the Cortes Generales in the following cases: [...] b) Treaties or agreements of a military nature; (...)."

Section 8 para. 1: "The mission of the Armed Forces, comprising the Army, the Navy and the Air Force, is to guarantee the sovereignty and independence of Spain and to defend its territorial integrity and the constitutional order."



### 5.6. Portuguese Republic

- **Express rules on military intervention**

Art. 135: "In international relations the President of the Republic has the competences: [...] c) Upon a proposal from the Government, after consulting the Council of State and subject to authorisation by the Assembly of the Republic, or, when the Assembly is not sitting and it is not possible to arrange for it to sit immediately, by its Standing Committee, to declare war in the case of effective or imminent aggression and to make peace."

- **Derived rules on military intervention**

Art. 7 para. 2: "Portugal advocates [...] the establishment of a collective security system, with a view to the creation of an international order that is capable of ensuring peace and justice in the relations between peoples."



### 5.7. Hellenic Republic

- **Express rules on military intervention**

Art. 36 para. 1: "The President of the Republic, complying absolutely with the provisions of Article 35 paragraph 1, shall represent the State internationally, declare war, [...]."

- **Derived rules on military intervention**

Art. 28 para. 2: "Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organisations, when this serves an important national interest and promotes cooperation with other States."

**National constitutions in English translation**  
(all from government or parliamentary web sites)

**France**

<http://www2.assemblee-nationale.fr/langues/welcome-to-the-english-website-of-the-french-national-assembly>

France 1789 Declaration of the Rights of Man:

[http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/cst2.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/cst2.pdf)

France Preamble to the 1946 Constitution:

[http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/cst3.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/cst3.pdf)

**Germany**

[https://www.bundestag.de/blob/284870/ce0d-03414872b427e57fccb703634dcd/basic\\_law-data.pdf](https://www.bundestag.de/blob/284870/ce0d-03414872b427e57fccb703634dcd/basic_law-data.pdf)

**Greece**

<http://www.hellenicparliament.gr/User-Files/f3c70a23-7696-49db-9148-f24dce-6a27c8/001-156%20aggliko.pdf>

**Netherlands**

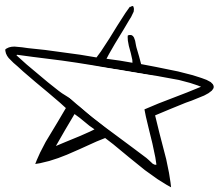
<https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008>

**Portugal**

<http://www.tribunalconstitucional.pt/tc/conteudo/files/constituicaoingles.pdf>

**Spain**

[http://www.lamoncloa.gob.es/documentos/constitucion\\_inglescorregido.pdf](http://www.lamoncloa.gob.es/documentos/constitucion_inglescorregido.pdf)



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