

§ 5 Classical fundamental decisions

I. The decision for sovereign statehood

- anchored in the constitution in different ways:
 - often implied in the decision for a unitary/federal, democratic or social "state" (examples: Indonesia (art. 1(1)), Germany (art. 20(1)), Spain (art. 1(1)).)
 - in countries who needed to struggle for their independence often emphasized in the first article of the constitution by insisting on the "independence" or "sovereignty" of the state (examples: Estonia, Latvia, Lithuania)
- requires to uphold the status of a sovereign state in the sense of public international law
 - does not exclude participation in a process of supranational geo-regional integration
 - however, for the participation in the formation of a geo-regional federal state a new constitution would be needed

II. The decision for a republican or monarchical system

- republic: head of state is elected for limited term
- monarchy: office of head of state is hereditary and for life
- no change from one system to the other under the same constitution
- no combination of both systems under the same constitution
 - a unique exception: the Yogyakarta Sultanate

III. The decision for unitarianism or federalism

1) The model of the unitary state: one level of statehood with ultimate control and responsibility

a) Characteristic features

- vertical concentration of powers and responsibilities at the national level
- competences, organisation, finances, supervision and usually even existence of regional

collectivities regulated by ordinary law

b) Advantages and disadvantages

- more simple, legal unity, possibly more efficiency
- higher risk of dictatorship, regional tensions and separatism

2) The model of the federal state: two independent levels of statehood within one sovereign state

a) Foundations

- new model, introduced in 1788 with conversion of USA from confederation to federal state
- theory of federalism established by "THE FEDERALISTS" 1787/88 and developed in USA, Germany, Switzerland
- basic idea: *unity in diversity*
- two concepts of statehood: *in the sense of public intern. law* (sovereign state) *and state law* (non-sovereign state within a state)

b) Delimitation from confederation and unitary state

- sovereign statehood lies with federation, not individual states (as in confederation)
- regional collectivities enjoy status of a state (unlike in unitary state)

c) Characteristic features

- sovereignty of the federation
- special status of the *federated states as states in the sense of state law*
 - ordinary public power under the national constitution
 - existence, autonomy, competences and basic finances guaranteed and regulated in the national constitution
 - constitutional autonomy and autonomous self-organisation
- federal structure cannot be abolished by constitutional amendment
- cooperation between the two levels regulated in the national constitution

d) Advantages and disadvantages

- unity in diversity (→ lower risk of regional tensions and separatism)
- vertical separation of powers (→ lower risk of dictatorship)
- more hubs of democracy
- complicated structure and vertical relations, intransparent responsibilities
- more complicated legal system, restricted legal unity

3) Crossover phenomena: unitarian federal states and highly autonomous regions in unitarian states

- some highly autonomous regions in unitary states (e.g. Spain) actually enjoy more independence than the weak federated states in some federal states (e.g. Austria); some unitarian states have even adopted the federal slogan "unity in diversity" (e.g. Indonesia).