Chapter II

The State and the Portuguese Constitutional System

Translation of "Capítulo II – O Estado e o Sistema Constitucional Português" available at *Aquila* for students of *Introduction to Law*

Chapter II - The State and the Portuguese Constitutional System

Topics covered in this chapter:

4. The political system and the legal system.

4.1. The political system. The phenomenon of power. The political structures of society. The State. The social and democratic State of contemporary law. The post-modern State (post-industrial era). The State in a society of communication and information.

4.2. The legal system. The Law as a system of legal rules (legal ordering) and as a system of legal relationships. Juridical situations and juridical relationships. The contemporary legal systems.

Chapter II - The State and the Portuguese Constitutional System

4.3. The analysis of the Law as a system of juridical rules (legal ordering). The pluralism of legal systems and the rule of law state. The branches of Law. The legality (juridiciality) and the characteristics of the rules.

4.4. The great moments of Law while a systemic legal system. The creation of rules. Application and interpretation of rules and resolution of specific cases.

4.5. The analysis of the Law as a system of juridical relations. The juridical situations. The subjective rights.

4.6. The political system, the legal/juridical system and the economic, business and financial systems.

Chapter II - The State and the Portuguese Constitutional System

1. The political-legal system

A political-legal system comprises:

- A system of values and juridical principles that constrain the production of legal rules;

- A system of Law which studies and classifies legal rules permitting to rise from specific to general;

- A system of political organization.

Chapter II - The State and the Portuguese Constitutional System

2. General features of Political-Legal Systems

a) Anglo-Saxon system (common law)

- It is characterized by a greater appreciation of the individual in relation to society and the State;
- The State is of a democratic, unitary and decentralized type;
- In its monarchical form, the sovereign has no relevant political powers. It is the case of the system of the 'Queen of England', in which the governance is entrusted to a Prime Minister;

Chapter II - The State and the Portuguese Constitutional System

- In its republican form, there is a concentration of governing powers in the President (U.S.A.).
- Thriving private sector, with small areas of intervention of the State in economic affairs.
- Pluralism of social organizations, with a strong associative and voluntary base, based on equality of the human-being before the law.
- Weak presence of written legal texts. The existing legislation is comprehensive and general.
- Reduced importance of codification with aversion to systematization.
- The law is the main source of Law, but subsidiary of jurisprudence. The Common Law is not customary.

Chapter II - The State and the Portuguese Constitutional System

- Jurisprudence (case law) is the main source of law. The decisions of Higher Courts constitute precedent of forceful application to other Courts.

- Thus, the judicial system is based on the theory of the precedent (procedural resolution through jurisprudential previous cases) and on the intervention of the jury at the trial. The role of the judges is not creative, but cognitive.

- Based on a “judge made law” concept, based on the specific law cases (case law), and on the confrontation between cases (reasoning from case to case).

- There is a clear separation between Law, Religion, Morality and Social Cortesy.

Chapter II - The State and the Portuguese Constitutional System

b) Romanic-Germanic System

- The power of the State assumes an imperial nature upon the citizens. The State possesses an "ius imperii“, meaning that it has more rights than the citizens.
- The State is democratic, unitary, centralized, strong, omnipotent and omnipresent.
- There is the conception of the principle of separation of powers.
- Based on the idea of popular sovereignty.
- Secular States, with clear separation between Law, Religion, Morality and Social Cortesy.

Chapter II - The State and the Portuguese Constitutional System

- Has got a written and programmatic Constitution.
- The State intervenes in the Economy.
- There is an identification of the State with the Society itself.
- There is a bureaucratic and centralized administration.
- It is a thorough, regulatory and typified legal system. Strongly codified.
- The judicial system is based on the power of judges.
- The law occupies, unarguably, the top spot in the fulfillment of the sources of Law, to the point of confusion between Law (*"Direito"*) and the law (*"lei"*).

Chapter II - The State and the Portuguese Constitutional System

- The custom has always relevance, whether or not theoretically recognized, occupying, in practical terms, a modest place in the hierarchy of the sources of Law.

- The jurisprudence (case law) derived from the Courts' decisions appears as a subordinate element of the law; although, lately, there is an increasingly trend of recognition of its value as an immediate source of Law.

Chapter II - The State and the Portuguese Constitutional System

c) Muslim System

- Archaic character of their institutions.
- Lack of systematization: the application of the Law is casuistic.
- The Islamic Law is characterized as a “religious law”, a body of rules that gives practical expression to religious faith and aspirations of Muslims, or even only as one of the faces of the religion of Islam, revealed from the will of God.
- It is not a legal system of territorial application, but of personal scope (set of provisions that govern the conduct of Muslims and the relationships of these amongst them).

Chapter II - The State and the Portuguese Constitutional System

The sources of Islamic law (Shariah) comprise:

- *Quran (Koran)* – the Holy Book of Islam, the basis of Law/Muslim civilization, which includes a set of revelations that Allah made to Mahomet, the last of their prophets and messengers, being this Book, clearly, the primary source of the Muslim Law.

- *Sunnah* – the tradition of the messenger of God, that is, the way the prophet behaves (set of acts of Mahomet), whose memory should guide the believers.

Chapter II - The State and the Portuguese Constitutional System

- *Idjmâ* – which is the unanimous agreement of the Muslim community (differing, as such, from the custom), with the purpose of suppressing insufficiencies of the legal system, and to explain some exceptions. This unanimity is required for people with the right competence to reveal the Islamic Law, which differs from complete unanimity.

- *Quiyâs* – consists in reasoning by analogy, being this a mode of interpretation and application of Law, which does not imply creation of Law.

- In the process of determining the content of Shariah (Law), one should resort first to the Quran and the Sunnah (primary sources), if necessary with support on Idjmâ. Only when a particular problem is not specifically regulated in the Quran or in the Sunnah, can one resort to Quiyâs.

Chapter II - The State and the Portuguese Constitutional System

- The Islamic Law is essentially a Law of a community of believers (those who profess the Islamism – the umma.
- A few years after the death of Mahomet, there was a great schism in Islam that would lead to the formation of the two major branches of believers: the Sunni (70%) and the Shia (30%).
- For Sunnis, Islam is based on the Quran and on the tradition related with the speeches and acts of the Prophet (Muslims must obey to these sources).
- For Shiites, the fixation of the content of Islamic Law stood upon the twelve Imans (Supreme Chiefs), who succeeded Mahomet. In fact, Shiites only take as authentic the traditions that have been transmitted by the twelve Magnets. The believers must follow the example set by those.

Chapter II - The State and the Portuguese Constitutional System

- The Law has an uniform nature, since Islamic Law does not vary from State to State, because its sources are the same in all countries whose legal systems are part of the Islamic family.

- In most Muslim countries there is a subordination relationship of the secular Law to the Shariah law, based on which even the fundamental rights enshrined in the Constitution will be interpreted (the nation, it is said, can not contradict the Shariah).

- In other States, the State Law (at least that that derives from a constitutional source) rules over the Shariah, although the former is inspired by the latter.

Chapter II - The State and the Portuguese Constitutional System

- The custom (urj) is of great importance among Arab populations, because "legal verses" of the Koran are based on Customary Law observed by the Arabs, in the time of Mahomet, having been corrected, eventually, those aspects that were deemed unsatisfactory.

- The Sunnah itself corresponds, in some aspects, to the customs that prevailed at the time of the Prophet.

- The custom was (and still is) a subsidiary legal source of the Shariah, at least among Sunnis.

- The judger is not allowed to create rules hierarchically equivalent to sacred sources.

Chapter II - The State and the Portuguese Constitutional System

- The interpretation of the Quran and the Sunnah is a task for the "lecturers" of Islam, whose works a judge must refer to, when at trial.

- If in doubt, judges can praise the opinion of legal advisers (muftis), but must not, *per se*, elaborate new solutions.

- Making reference to previous decisions as grounds for judicial decisions is not common in Muslim countries' Courts. Strictly speaking, the only worth precedent sources of Islamic Law are those set by the Prophet himself, and which are part of the Sunnah.

Chapter II - The State and the Portuguese Constitutional System

- Shariah is not confused with the science that studies it, designated by *Fiqh*.

- The Fiqh is divided into two segments: the *Usul Al-Fiqh* (analysis of the sources of Law) and the *Fiqh Al-Furu* (study of specific branches of Law - Fundamental Rights, Criminal Law, Family Law, Property Law, Commercial Law).

- On another level, there are studies related to religion and morality: *Shadhah* (testimony of faith), *Salat* (prayer), *Siyam* (Ramadan), *Zakat* (religious tax) and *Hajj* (pilgrimage to Mecca).

Chapter II - The State and the Portuguese Constitutional System

d) African Systems

- Autochtonous legal systems (which were originated on different population groups from different regions), being essentially customary and transmitted by means of an oral tradition.
- The customary source assumes a unique relevance, without parallel in any other legal-political system, with pre-State juridical rules or extra-State rules derived from rural communities.
- There is no reduction of legal rules to writing.
- Close connection to a religious worldview, which is common among African populations.

Chapter II - The State and the Portuguese Constitutional System

- Unique Communitarianism.
- Appreciation of the hierarchy and the authority within the family and within the political community.
- Highly distinctive (because of sex, age, caste, ...) in many of the legal solutions that enshrines.
- Harmonized Law arising from supra-national organizations (African Union, the Organization on the Harmonization of Business Law in Africa, the Economic Community of West African States, the West-African Economic and Monetary Union, the Southern Africa Development Community, the African Regional Intellectual Property Organization).

Chapter II - The State and the Portuguese Constitutional System

- A Legal Pluralism which implies that African legal systems can be erected in a single Legal Family, with autonomy before others.

- Cultural transfers operated by European colonialism and occupation of North Africa by the Arabs in the seventh and eighth centuries, resulted in the breakdown of those African legal systems into four groups:
- Those with a Romanic-Germanic root, in which are included the Lusophone countries (Angola, Cabo-Verde, Guiné-Bissau, Moçambique and São Tomé e Príncipe) and the Francophones (Senegal, Mauritania, Mali, Niger, Chad, Central African Republic, Gabon, Republic of Congo, Madagascar, Comoros and Seychelles).

Chapter II - The State and the Portuguese Constitutional System

- Those of Common Law, which correspond, roughly, to the old English possessions (Ghana, Nigeria, Kenya, Uganda, Zambia, Zimbabwe).

- Hybrid systems, among which stands out the South Africa system, as well as the one of the Cameroon and Mauritius, which combine Roman Law (Dutch and French) and the English Common Law.

- Those of Muslim basis, reflecting the "Islamization" of local populations, following the Arab occupation (Morocco, Algeria, Tunisia, Libya, Egypt, Somalia).

Chapter II - The State and the Portuguese Constitutional System

e) Hindu System

- The Hindu Law is a religious Law, based in Hinduism (applicable in India, but also in Nepal, Bangladesh, Malaysia, Pakistan, Singapore and Sri Lanka).

- The Hindu Law is not confused with the Indian Law. India is today a secular republic, endowed with an hybrid legal system, which combines characteristics of Roman-Germanic family and Common Law, including, on the top of the hierarchy of the sources, a written constitution.

Chapter II - The State and the Portuguese Constitutional System

- The main source of Law is the *Dharma*, which is essentially religious and a standard of conduct to the Hindu, belonging to a certain caste, determined in a certain stadium of his life.

- The obligation of respecting the *Dharma* is not only legal, but also religious: who conducts himself according to the *Dharma* will live in accordance with God's will. It is a moral and social duty.

- The pillars of the *Dharma* are the four virtues mentioned in the religious scripture called *Baghavata Purana*: mercy, renunciation, purity and truth;

Chapter II - The State and the Portuguese Constitutional System

- Despite the influence of the *Dharma*, customs, case law and jurisprudence are also sources of its rules (of the Hindu system).
- It is a complex Law, which comprises rules found in millenarian religious sources and others of recent origin, transposed to legal statutes (diplomas) that seek to adapt it to the requirements of contemporary societies.
- It is strongly differentiated due to spatial, social and personal criteria (territory, caste, sex, …).
- The Hindu society is divided into four castes (by descending order): the Brahmans (in exclusive competition for priesthood and teaching); the Kshatriya (military and administration activities); the Vaixias (mainly farmers, traders and cattle breeders); and the Sudras (servants and workers).

Chapter II - The State and the Portuguese Constitutional System

- Each caste comprises several sub castes (*jati*). Belonging to a certain caste is fixed at birth by hereditary (except in the case of conversion to Hinduism), and is unchangeable.

- Belonging to a caste derives, according to Hindu tradition, from each one's *karma*: one can only pass from one caste to other, of a higher level, in a future incarnation, by means of his actions. However, the practice of certain actions - those in disagreement with Dharma's own caste - implies the decline in the hierarchy of castes or the complete loss of caste.

- At the margin of the caste system are the so-called pariah (*Dalit*), who perform the so-called despicable tasks, according to the other members of the social hierarchy.

Chapter II - The State and the Portuguese Constitutional System

f) Communist System

- It first appeared in Russia, following the October Revolution of 1917.
- It aims to implement the theories of Marx and Engels, with the necessary adjustments of Trotsky and Lenin.
- The communist model takes a significant growth after World War II, by means of the polarization of politics: USA vs USSR.
- Nevertheless, it almost disappears with the fall of the Berlin Wall (1989) and with the dissolution of the URSS (1990/1991). Nowadays, only Cuba, North Korea, North Vietnam and some African States have some evidence of this system.

Chapter II - The State and the Portuguese Constitutional System

- China, on the other hand, has a distinct and hybrid system, involving the maintenance of a single party with the liberalization of the economic structure.

- The current Constitution of the Republic of China is founded, according to its Preamble, on four fundamental principles: the dictatorship of the proletariat, the leading role of the Communist Party, the guiding role of Marxism-Leninism and Mao Zedong Thought, and the consecration of a socialist system.

- A considerable number of laws and Codes were published at a fast pace. They combine the Chinese legal tradition with several elements from Roman-Germanic and Common Law roots, which gives a syncretic value to the current Chinese Law.

Chapter II - The State and the Portuguese Constitutional System

- The Chinese conception of law is, in some sense, the very negation of its intrinsic value – by other words, is the preference of a population for a non-legal system. They give preference to the *Li* (rites and unwritten rules of conduct, established by usage and conform to each position in social relations), in detriment of the *Fa* (Law).

- In this legal-political system there is no separation of powers.

- Citizens are seen as recipients of legal provisions, rather as holders of rights that the State should be compelled to recognize.

- The Chinese Law is not a religious Law, because their provisions are not based on any divine revelation, relying instead on law and customs.

Chapter II - The State and the Portuguese Constitutional System

In the communist model the political ideology plays a bigger role: that of theoretical design and corresponding implementation. Some of its features are:

- An atheist trans-personalism;
- The conception of the economy as a determinant infrastructure of historical evolution;
- The affirmation of the State and the Law as instrumental super-structures which provide support to the class in each dominant economic model;
- An egalitarian, classless, and stateless society, without the need of legal coercivity;

Chapter II - The State and the Portuguese Constitutional System

- The revolution as a permanent and transformative methodology;
- The dictatorship of the proletariat;
- The existence of a single party - who directs and controls the State, all its organs and all executed acts;
- The elimination of the distinction between Private Law and Public Law forced by the collectivization of the means of production and the disappearance of private property;
- The legislative act has the monopoly on the production of Law. Jurisprudence is not taken as a source of Law nor is it recognized by the State as Law.

Chapter II - The State and the Portuguese Constitutional System

3. The State

The word State, which derives from *status*, does not have a unique sense, presenting, on the contrary, rich versatility of meaning, as a condition, a set of rights and duties, social stratum, dignity, property, etc.

Narrowly, the term has been used to refer either to a political independent territorial community, integrated by rulers and those who are governed (State-Community or State-Society), or to the power of the Government of that community (State-Power or State-Government).

Chapter II - The State and the Portuguese Constitutional System

The modern concept of State, coming from the XVIII century, settles on the organizational form of a community, i.e., a population fixed in a particular territory, in which were established several institutions, by their own authority, that develop the rules necessary for life in society, and which impose their execution (political power).

We can find within the modern concept of State:

a) **Nation-State** *("Estado-Nação")* - Formed by the people, the territory and the political power;

Chapter II - The State and the Portuguese Constitutional System

b) **State-Apparatus** *("Estado-Aparelho")* – a set of organs which hold power within each state (Presidency of the Republic, Parliament, Government and Court).

3.1. Nation-State

a) People

Set of citizens connected to the State through the bond (*"vínculo"*) of legal nationality.

Portuguese citizens are those who, as such, are deemed by Law or international convention (art.4 of the CRP).

The criteria for the award of citizenship or nationality, by the different legal orders, are:

Chapter II - The State and the Portuguese Constitutional System

- *Ius sanguinis* – nationality is awarded on the basis of blood ties or filiation of the citizens of a particular State;
- *Ius soli* - citizenship is awarded on the basis of the location of birth.

b) Territory

Located on the European continent and the Azores and Madeira - with its own status - arts.225 and following of the CRP (art.5, no. 1, CRP), as well as the underground, the mineral deposits, the mineral-water sources and the natural underground cavities (art.84, no.1, §c) of the CRP) – terrestrial territory.

Chapter II - The State and the Portuguese Constitutional System

It includes the boundaries of territorial waters, the exclusive economic zone and the Portuguese rights to adjacent seabed - maritime territory - (art.5, no.2, CRP), as well as the airspace over the territory, above the recognized threshold for ownership or surface right - territory by air - (art.84, no.1, §b) CRP).

The following are also part of the State territory:

- Ships, aircraft and vehicles under national flag, even if they are in a foreign State territory.

Chapter II - The State and the Portuguese Constitutional System

- Consulates and Embassies located in in foreign countries.

c) Political Power

It is a democratic and participatory system, through universal suffrage (art.10, no.1, CRP) and political parties (art.10, no.2, CRP), based on popular sovereignty and pluralism of expression, characteristics of a State-Law (art.2 of the CRP), based on the autonomy of local municipalities (art.235 and following, CRP) and on the democratic decentralization of Public Administration (art.6, no.1, and 266 and following, CRP), holding a commitment on the construction of the European Union (art. 7, no.6, CRP).

Chapter II - The State and the Portuguese Constitutional System

3.2. State forms

- ✓ Unitary States (*"Estados Unitários"*) - Convergence of political power, with attribution and execution of State functions to national institutions/organs. The State possesses a single Constitution and the large institutions (police, armed forces, prison system) are common throughout the country.

- ➢ Types of Unitary States:

• Centralized States (*"Estados Centralizados"*) - Centralization of ownership and exercise of political power. There are neither manifestations of political and administrative decentralization nor there is any autonomy of any social structure or policy (Morocco, Cuba, China).

Chapter II - The State and the Portuguese Constitutional System

- Decentralized States (*"Estados Descentralizados"*) - Existence of structured communities with their own characteristics, which will be conferred a power of self-government, which may occur in either an administrative power or one derived from a specific legislative competence (Spain, Italy, UK, Bolivia).

- State with Devolution (*"Estados Desconcentrados"*) - Division of powers between central administrative institutions/bodies and agencies or departments of the public administration, to which are committed some assignments. There are different levels of administrative nature, where services are subject to hierarchical power (Spain, Italy, UK).

Chapter II - The State and the Portuguese Constitutional System

- ✓ Compound or Federal States (*"Estados Compostos ou Federais"*) - States formed by States and not by mere regional territorial units, which comprise various political centers (USA, USSR, Germany, Mexico, Brazil, Malaysia, Austria, Australia).

- ✓ Portugal is an example of an unitary decentralized State, with devolution and partially regionalized (art.6 of the CRP). The autonomous regions of the Azores and Madeira are set as regional entities with self-government institutions/organs, one of them being directly elected – Regional Parliament (ALR), an elected body - Regional Government - and a body representing the Republic - Representative of the Republic at the Autonomous Region.

Chapter II - The State and the Portuguese Constitutional System

3.3. Traditional functions of the State

The concept of state functions can be analyzed:

- As a task - constitutionally set forth in art.9 of the CRP (major State tasks);
- As an activity - set of acts that the State proceeds in order to achieve its common goals.

Purpose of the State:

- Justice - art.9, §d, CRP;
- Safety - individual (defense of political democracy and fundamental rights - art.9, §b and §c, CRP) and collective (guarantee of national independence - art.9, §a, CRP);

Chapter II - The State and the Portuguese Constitutional System

- Economic, social and cultural welfare - art.9, § d, CRP.

- There are several authors who have devoted themselves to the study of State functions. We emphasize *Montesquieu*, who presents us the emergence of three powers (and functions) - legislative, executive and judicial.

- States have, traditionally, their own functions; in the Portuguese case, these can be divided in four major groups:
- **Legislative function** - embodied in the adoption of legislative acts (art.112, no.1, CRP), such as laws, decree-laws and regional legislative decrees, which are approved, respectively, by the Parliament (art.164 and 165, CRP), the Government (art.198, CRP) and the Regional Parliament (ALR) (art.227, CRP);

Chapter II - The State and the Portuguese Constitutional System

- **Judicial function** - which practice is reflected in judgments and rulings of Courts, as is constitutionally stated in art.209 of the CRP, for the resolution of conflicts between individuals and for the verification of compliance of any legislative act with the CRP (Constitutional Court - art.221, CRP). The judicial function has an express definition in art.202, no.2, CRP;

- **Political (Governing) function** – Directive activity of the State, that encompasses the acts of governing institutions/bodies, relating to the country's general policy (definition of public interest, State purposes and the choice of the appropriate means to achieve them) – Parliament (AR) and Government (art.161 and 197 of CRP).

Chapter II - The State and the Portuguese Constitutional System

- **Administrative Function** - Execution of laws and satisfaction of collective needs (justice, safety, well-being), derived from political or legislative choices. It can consist as well in the exercise of competences of normative nature and content. These acts, adopted by the Public Administration, are generically called as regulations (*"regulamentos"*) (art.199, 266, 267 and 268, CRP).

3.4. From a State of Law (*"Estado de Direito"*) to a Social State of Law (*"Estado Social de Direito"*)

It is understood by State of Law the one in which the entire action of political power is subject to legal rules, to ensure the rights and freedoms of citizens before the State itself.

Chapter II - The State and the Portuguese Constitutional System

a) Liberal State of Law

It is with the French Revolution that the Liberal State of Law arises. This marks the first attempt to institutionalize the State of Law and arises as a reaction to the tyrannical power of royal absolutism (Absolute State). The Liberal State of Law relied, in particular, on the following principles:

- Rule of law;

- Protection of individual rights taken as natural rights;

Chapter II - The State and the Portuguese Constitutional System

- Defense of the principle of separation of powers;

- Assignment to Courts of the competence to ensure that legality is achieved;

- Citizens can appeal to Courts, whenever they feel they are being prejudiced by the public administration.

➢ For the Liberal State of Law, social issues, linked to the achievement of collective welfare, were not worthy of their attention.

Chapter II - The State and the Portuguese Constitutional System

b) Welfare State (*"Estado Social de Direito"*)

- Reactions against the Liberal State of Law, by trade unionists, socialists and Catholics with social concerns, began at the late nineteenth century. The State abstentionism generated serious injustice situations, related with individual rights and freedoms and the protection and defense of the common-good.

- Moreover, crises following the World Wars I and II, as well as the evolution recorded in liberal-democratic systems of the West, led to the abandonment, by the State, of its abstentionist position, starting then to intervene in increasingly broad domains of social life, thus giving rise to the emergence of a Welfare State.

Chapter II - The State and the Portuguese Constitutional System

- The Welfare State sought to avoid the individualistic characteristics of the Liberal State of Law, exerting a corrective function over the inequalities, being subsidiary in relation to private enterprise, combining an intervention in social affairs (Social rights - health, education, housing, environment, …), with the preservation of rights and freedoms of citizens.

Welfare State requisites:

• Rule of Law - The law is the expression of the general will (the will of the people), and therefore it must be complied with either by citizens and by the State;

Chapter II - The State and the Portuguese Constitutional System

• Separation of powers - The division between legislative, executive and judiciary power should not be regarded as absolute and rigid. However, it is essential, at least, the maintenance of the separation of powers in relation to the judiciary power, this is to say, the preservation of the judicial function by the Courts;

• Legality of Administration – the submission of the Administration to the law is a requirement. All are governed by the same principles, including the State, when establishing relations with citizens. The State is subject to the Law created by itself;

Chapter II - The State and the Portuguese Constitutional System

- Formal and juridical consecration of the material achievement of citizens' rights, freedoms and guarantees - protection, security and effective implementation of fundamental human rights by the State.

c) Democratic State of Law

The State of Law that postulates the representative and pluralistic democracy, the respect and guarantee of enforcing fundamental rights and freedoms, the separation and interdependence of powers, and the economic, social and cultural democracy (art.2, CRP) - Welfare State.

Chapter II - The State and the Portuguese Constitutional System

3.5. Designation systems that exist in States

There are several methods we can use to choose the holders of different positions (State, Autonomous Regions, organs of local municipalities and other structures of Public Administration).

a) Election - reflected in the exercise of a right of political participation – the right of suffrage – which is an act of choice through a vote. In Portugal, following the provisions of art.10, no.1, and art. 49 of the CRP, the suffrage is:

- Free – it implies the freedom to vote;

Chapter II - The State and the Portuguese Constitutional System

- Optional - citizens have a voting civic duty (unlike other countries, such as Brazil, where the vote is binding, and voters are forced to vote, suffering penalty sanctions when they do not vote);

- Secret – any kind of exhibition of the personal vote is prohibited;

- Personal – it must be exercised personally, and only exceptionally can a citizen be accompanied by other person to express his vote;

- Periodical - based on republican principles, the political appointees have mandates with a fixed duration.

Chapter II - The State and the Portuguese Constitutional System

The mandates are as follows:

• The Head of State/President of the Republic (PR) has a mandate lasting for 5 years (art.128, no.1, CRP);

• The legislature of the Parliament (AR) lasts for 4 legislative sessions (art.171, no.1, CRP);

• Elections for the Regional Parliament (ALR) occur, regularly, every 4 years;

• The mandate of local institutions/organs lasts for 4 years.

The election of the holders of the various positions in the State can be:

- Individual - when suffrage lies in choosing a citizen for a particular position – Head of State (PR) - (art.126, no.1, CRP);

Chapter II - The State and the Portuguese Constitutional System

- By means of a list - the vote is made upon a set of people, organized in a list, which is prepared, as a rule, by the political parties – election of the members of the Parliament (AR) (art. 151, no.1, CRP).

- In addition to this distinction, suffrage can be:

- Unique member (*"uninominal"*) - when is in dispute, in a particular constituency, only one mandate;

- Multiple members (*"plurinominal"*) - when, in the same election circle, several mandates are being disputed.

Chapter II - The State and the Portuguese Constitutional System

- ✓ The suffrage by means of a list is always multiple (election for the Parliament), but individual suffrage can be uninominal (when is in dispute, in a particular constituency, only one mandate) or multiple (when, in the same constituency, are being disputed several mandates – for example, several names individually considered, for several mandates, instead of a single party list).

- ✓ Finally, the suffrage can be:

- ➢ **Direct** - the electoral system allows the election of holders without intermediation - Head of State (PR).

Chapter II - The State and the Portuguese Constitutional System

- **Indirect** – when voters choose individuals who, after elected, proceed to the election of the holders of governing bodies (U.S. Citizens elect the "great-electors", who, subsequently, elect the President of the USA).

b) Inheritance (*"herança"*) - the exercise of power occurs via inheritance (the usual form of monarchy appointment of the Head of State).

c) Co-optation ("cooptação")- election of the elected. In the Portuguese case, 3 of the 13 judges of the Constitutional Court are co-opted by the 10 judges elected by Parliament. The co-opted will have the same functions as the members of the electoral college.

Chapter II - The State and the Portuguese Constitutional System

d) Appointment (*"nomeação"*) – the holder of an organ is appointed by a different organ, being this an unilateral act (generally public), whose effectiveness depends on the acceptance of the elected.

e) Inherence (*"inerência"*)– it consists in designating an holder because he already holds some other position. In Portugal, the Chief of State (PR) is, inherently, the Supreme Commander of the Armed Forces.

f) Raffle (*"sorteio"*) - the random element is used to the appointment of an holder of an office.

g) Procurement (*"concurso"*) - implies the choice of a particular holder by terms of the realization of a procurement procedure. This is what happens to the appointment of officers holding positions in Public Administration, under the provisions of Law no.2/2004, 15 January.

Chapter II - The State and the Portuguese Constitutional System

3.7. Electoral Systems

- **Electoral Majority Systems** – aim to ensure political stability and can assume one of two types:

• Simple majority systems (or "one round" system, or "plurality of votes" system) - the mandates are allocated to who obtains the highest number of votes;

• Absolute majority systems (or "two rounds" system) - the mandate is assigned to the candidate who obtains, in the first ballot, the absolute majority of the votes; if, by any chance, no one achieves the majority, a second round is held, in which the two major candidates face each other, winning the candidate that obtains the greater number of votes in that second round – ex: Head of State (PR);

Chapter II - The State and the Portuguese Constitutional System

- **Proportional Electoral Systems** – this is the system that tries to ensure the expression of the prevailing political views, setting itself away from a system that favors a single winner. This is the case of the Portuguese elections to the Parliament (AR), the Regional Parliament (ALR), the Municipal Councilors (*"Vereadores Municipais"*) and the European Parliament, in which the *Hondt* method is used.

- *Hondt* Method (theorized by Victor Hondt) – establishes a relation with several multimember electoral circles, territorially defined, with several candidates, organized by lists. This method involves the following rules:

Chapter II - The State and the Portuguese Constitutional System

1) The number of obtained votes is determined, separately, by each list;

2) The number of votes of each list is divided, sequentially, by 1-2-3-4-5, …, in order to obtain some coefficients;

3) These coefficients are aligned, by a decreasing order, considering, essentially, the number of mandates in dispute;

4) The mandates shall be allotted to the lists, given the obtained coefficients; each list receives as many mandates as the terms of the series it is entitled.

Chapter II - The State and the Portuguese Constitutional System

- Take this example: the city constituency circle elects 5 members for the Parliament (AR) and there are three competing political parties:

	1	2	3	4	5
Party A	12000	6000	4000	3000	2400
Party B	7500	3750	2500	1875	1500
Party C	4500	2250	1500	1125	900

- Mandates are allocated as follows:

Chapter II - The State and the Portuguese Constitutional System

- Party A – 1st mandate (12000)
- Party B – 2nd mandate (7500)
- Party A – 3rd mandate (6000)
- Party C – 4th mandate (4500)
- Party A – 5th mandate (4000)

Thus having:

- Party A - 3 seats
- Party B - 1 seat
- Party C - 1 seat

Chapter II - The State and the Portuguese Constitutional System

3.8. State and Political Parties

- ✓ Political parties shall participate in organs based on universal and direct suffrage, according to their electoral representation (art.114, no.1, CRP)

- ✓ Political parties are organizations struggling for the acquisition, the maintenance and the exercise of political power. The aim of a party is holding power, and this is why it usually possesses 4 characteristics (art.13, no.2, and art.114, CRP):

- ➢ Reasonable length of organization;

Chapter II - The State and the Portuguese Constitutional System

- Generalized territorial implementation (there are no regional political parties);
- There is a will to exercise political power (occupying the governance structures);
- It seeks for popular support, using elections and other forms of political participation;

- ✓ Functions, structure and organization of parties are comprised in the political and constitutional system, which regulates and delimits them (Law on Political Parties - LPP - Law no.2/2003, 22 August).

Chapter II - The State and the Portuguese Constitutional System

- ✓ In order to form a political party, a petition signed by at least 7.500 electors is needed, which must be presented for registry and identification purposes before the Constitutional Court (TC) - (art.14 and art.15, no.1, LPP).

- ✓ In addition, they obey to four legal principles:

- ➢ Principle of Liberty – the constitution of a political party is free, and they can freely pursue their own ends, without interference from public authorities (art.4, LPP);

Chapter II - The State and the Portuguese Constitutional System

- Democratic principle – democracy must be present in their internal organization (art.5, LPP);
- Transparency principle – a party is required to advertise their purposes and their activities (art.6, LPP);
- Principle of citizenship - parties are constituted by citizens with political rights (art.7, LPP).

✓ No political party can have an armed, military, militarized, paramilitary or racist nature (art.46, no.4, CRP)

Chapter II - The State and the Portuguese Constitutional System

3.9. The role of referendum in the State

- ✓ The referenda is an instrument at the service of the organs of State, Autonomous Regions of the Azores and Madeira, and local municipalities, so that they can consult the electorate on certain issues.

- ✓ However, the representative nature of our government system should neither be "harmed" by instruments of direct democracy, nor the powers of the political organs can be reduced by them.

Chapter II - The State and the Portuguese Constitutional System

- ✓ The referendum in Portugal has three modalities:

- ➢ Local referendum - which corresponds to the old consultations to citizens, which are legally enshrined in art.240 of the CRP;

- ➢ National referendum - enshrined in art.115 of the CRP;

- ➢ Regional referendum - enshrined in art.115, no.13, and art.232, no.2, of the CRP.

- ✓ For the convening of a national referendum, and according to art.115, no.3, of the CRP, the following is essential:

Chapter II - The State and the Portuguese Constitutional System

- It must be a matter of national interest;
- It must be a matter of competence of the Parliament (AR) or the Government;
- The decision, whether of the Parliament or of the Government, should be processed through an International Convention or through a legislative act.

- ✓ It can not be the subject to referendum (under art.115, no.4, of the CRP):
- Amendments to the Constitution;
- Issues and acts of budgetary, tax and financial nature;

Chapter II - The State and the Portuguese Constitutional System

- Matters set forth in art.161 (without prejudice of paragraph no.5) and art.164 (with exception of provision of § i of the CRP).

- ✓ Under the provision of art.115, no.2, of the CRP, the initiative of the referendum may be of popular nature, through a project of law submitted to the Parliament (AR); however, the referendum can only be summoned by the President (PR) under proposal of the Parliament (AR) or the Government (art.115, no.1, CRP).

- ✓ The proposal of these two organs of sovereignty does not oblige the President (PR), which is free to decide about the launching of the query.

Chapter II - The State and the Portuguese Constitutional System

4. Portuguese Constitutional System

- ✓ What is the fundamental rule in Portugal?
- ✓ The Constitution is the code of codes, because it contains a systematized set of legal rules, integrated into a common spirit, which makes it a coherent and self-sustaining whole.
- ✓ The Constitution is the ultimate statute of political power of the State, as well as the essential statute of the citizen, regarding his individual juridical sphere, and his forms of intervention in politics.

Chapter II - The State and the Portuguese Constitutional System

- **Formal Constitution** (CRP) – it is a written text encoding the rules which regulate the shape and exercise of political power, and that is enacted by an organ with special powers. It is a document which is prepared and revised according to a more demanding formalism than other laws.

- **Material Constitution** – it is the State organization, regarding the purposes and the ownership of their institutional organs, as well as the form of government, whether or not deriving from formal sources. It includes customs, traditions and written or unwritten rules that characterize a particular political regime (customary constitutional rules, electoral laws, the statute of the Parliament (AR), the laws of organization of the Government, …, which are kept outside the constitutional text).

Chapter II - The State and the Portuguese Constitutional System

4.1. The Portuguese Constitution and the History of the Constitutions

- Constitutions of monarchical liberalism - 1822 (1822-1823 / 1836-1838), 1826 (1826-1828 / 1834-1836 / 1842-1911), 1838 (1838-1842);
- Constitution of the 1st Republic - 1911 (1911-1926);
- Corporatist Constitution of the New-State period (*"Estado Novo"*) – 1933 (1933-1974);
- Constitution of the democratic regime - 1976 (from 1976 to this day).

4.2. The structure of the current CRP

- Preamble;
- Fundamental Principles;

Chapter II - The State and the Portuguese Constitutional System

- Part I - Fundamental rights and duties;
- Part II - Economical organization;
- Part III - Organization of political power;
- Part IV - Guarantee and revision of the Constitution;
- Final and transitional provisions.

4.2.1. Preamble

It has neither legal nor binding value, only an historical value. It sets the origin of the constituent power in the sequence of the Armed Forces Movement of the 25th of April 1974. Its original version remains unchanged since 1976. It helps on the interpretation of its content.

Chapter II - The State and the Portuguese Constitutional System

4.2.2. Fundamental Principles

Arts.1 to 11 of the CRP: Portuguese Republic (art.1); Democratic Juridical State (art.2); Sovereignty and Legality (art.3); Portuguese Citizenship (art.4); Territory (art.5); Unitary State (art.6); International Relations (art.7); International Law (art.8); Fundamental Tasks of the State (art.9); Universal Suffrage and Political Parties (art.10); National Symbols and Official Language (art.11).

4.2.3. Part I - Fundamental Rights and Duties

Arts.12 to 79 of the CRP – This part comprises several Titles and Chapters:

Chapter II - The State and the Portuguese Constitutional System

Title I - General Principles:

- Principle of universality (art.12);
- Principle of equality (art.13);
- Principle of equivalence between nationals and foreigners (art.15);
- Principle of the prohibition of the excess, and that of the proportionality, combined with the principle of the necessity (art.18)

Title II - Rights, Freedoms and Guarantees

Chapter I - Rights, freedoms and guarantees:

- Right to life (art.24);

Chapter II - The State and the Portuguese Constitutional System

- Right to personal integrity (art.25);
- Right to liberty and safety (art.27);
- Deportation, extradition and asylum rights (art.33);
- Inviolability of one's home and correspondence (art.34);
- Family, marriage and filiation (art.36);
- Freedom of expression and information (art.37);
- Freedom of the press and media (art.38);
- Right to be heard, to have a response and the right of political reply (art.40);

Chapter II - The State and the Portuguese Constitutional System

- Freedom of conscience, religion and worship (art. 41);
- Freedom of cultural creation (art.42);
- Freedom of learning and teaching (art. 43);
- The right to travel and to emigrate (art.44);
- The right of assembly and demonstration (art.45);
- Freedom of association (art.46);
- Freedom to choose an occupation and have access to civil service (art.47).

Chapter II - The State and the Portuguese Constitutional System

Chapter II - Rights, freedoms and guarantees of political participation

- Participation in public life (art.48);
- Right to vote (art.49);
- Right of access to public office (art.50);
- Associations and political parties (art.51);
- Right to petition and class action right (art.52).

Chapter III - Rights, freedoms and guarantees of workers

- Job safety (art.53);
- Workers Commissions (art.54);

Chapter II - The State and the Portuguese Constitutional System

- Freedom of association (art.55);
- Rights of trade unions and collective hiring (art.56);
- Right to strike and prohibition of lock-out (art.57);

Title III - Rights and Economic, Social and Cultural Duties

Chapter I - Economic rights and duties

- Right to work (art.58);
- Workers' rights (art.59);
- Consumers' rights (art.60);

Chapter II - The State and the Portuguese Constitutional System

- Private enterprise, cooperative and self-managed initiatives (art.61);
- The right to private property (art.62);

Chapter II - Social rights and duties

- Social security and solidarity (art.63);
- Health (art.64);
- Housing and Urbanism (art.65);
- Environment and quality of life (art.66);
- Family (art.67);
- Paternity and maternity (art.68);

Chapter II - The State and the Portuguese Constitutional System

- Childhood (art.69);
- Youth (Article 70);
- Citizens with disabilities (art.71);
- Seniors (art.72);

Chapter III - Cultural rights and duties

- Education, Culture and Science (art.73);
- Teaching (art.74);
- Public, private and cooperative teaching (art.75);
- University and access to higher education (art.76);
- Democratic participation in education (art.77);

Chapter II - The State and the Portuguese Constitutional System

- Cultural creation and utilization (art.78);
- Physical Culture and Sports (art.79);

4.2.4. Part II - The Economic Organization (from art.80 to art.107 of the CRP – it includes a set of programmatic rules related with the intervention of the State in economic life:

Title I - General Principles

- Fundamental principles (art.80);
- Priority tasks of the State (art.81);
- Sectors of ownership of the means of production (art.82);

Chapter II - The State and the Portuguese Constitutional System

- Requirements for public ownership (art.83)
- Public domain (art.84);
- Cooperatives and experiences of self-management (art.85);
- Private companies (art.86);
- Economic activity and foreign investments (art.87);

Title II - Plans

- Objectives of the plans (art.90);
- Economic and Social Council (art.92);

Chapter II - The State and the Portuguese Constitutional System

Title III - Agricultural, Commercial and Industrial Policies

- Objectives of agricultural policy (art.93);
- Objectives of commercial policy (art.99);
- Objectives of industrial policy (art.100).

Title IV - Tax and Financial System

- Financial system (art.101);
- Bank of Portugal (art.102);
- Tax System (art.103);
- Taxes (art.104);
- Budget (art.105);
- Preparation and monitoring of budget (art.106 and art.107).

Chapter II - The State and the Portuguese Constitutional System

4.2.5. Part III - Organization of political power (from art.108 to art.276 of the CRP)

I. Constitutional principles of political organization expressed in the CRP:

- Principle of popular sovereignty (arts.1, 2 and 3);
- Respect and guarantee for the fundamental rights of citizens (art.2 and art.24 and following);
- Pluralism of expression and political democratic organization (art.2);
- Principle of direct and universal suffrage as a way of appointing governors (art.10, no.1, and art.113);

Chapter II - The State and the Portuguese Constitutional System

➢ Separation and interdependence of the organs of sovereignty and their direct subordination to CRP (art.111, no.1, and art.108):

• The constitution qualifies as sovereign organs: the Head of State (PR), the Parliament (AR), the Government and the Courts (art. 110, no. 1);

• These organs act separately, but under interdependence (art.111, no. 1 and 2). Their relative independence derives from the principles of specification and specificity of functions.

Chapter II - The State and the Portuguese Constitutional System

• The principle of specification means that each institutional organ, *per se*, shares, in the exercise of sovereignty, a particular area of political and juridical power, so as to prevent conflicts.

- Independence of the Courts (art.203);

- Obedience of Courts and Public Administration to the law - principle of legality (art.203 and art.266, no.2);

- Independence of Churches and of the State (art.41, no.4);

- Republican form of government (art.1);

Chapter II - The State and the Portuguese Constitutional System

II. Government System

✓ Democratic representative government system (*"Sistema de Governo Democrático Representativo"*) - the power belongs to the political community, but is exercised by organs/agencies acting on authority and on behalf of that community, and hold by individuals elected by universal suffrage, as representatives of all the citizens.

✓ **Types of democratic representative government systems:**

➢ Parliamentary System (*"Sistema Parlamentar"*) - Takes as reference the British example, where the government is exercised by a cabinet, formed accordingly to the indications of the Parliament. Some specific elements are: the absence of significant political power by the Head of State; the political responsibility of the Government before the Parliament.

Chapter II - The State and the Portuguese Constitutional System

- **Presidential System** (*"Sistema Presidencialista"*) – it was born more than 200 years ago in the USA. The exercise of power by the Head of State and the absence of political accountability of the Executive before the Parliament are generic features that distinguish this system.

- **Semi-presidential system** (*"Sistema semi-Presidencialista"*) - characterized by the convergence of presidential and parliamentary influences. This is the democratic representative system of the Portuguese government. In it we can find elements of the parliamentary and presidential systems.

Chapter II - The State and the Portuguese Constitutional System

- **Elements of the Parliamentary System:**

• The Government is formed accordingly to the composition of the Parliament, reflecting the election results. The Government's choice is, therefore, neither a separate reality from the verdict of the parliamentary elections, nor from the relative weight of each party represented in Parliament (AR) (art.187);

• There is a duality between the Head of State (PR) and the Head of Government (PM);

• There are political responsibilities of the Government before the Parliament (AR) and before the Head of State (PR) (art.190 and art.191);

Chapter II - The State and the Portuguese Constitutional System

• There are some acts of the Head of State (PR) that require a ministerial referenda, as part of a political commitment on certain acts (art.140 and art.197, no.1, § a).

❑ **Elements of the Presidential System:**

• The Head of State (PR) is elected by universal, direct and secret suffrage (art.121);

• The Head of State (PR) has political veto, as well as veto by unconstitutionality, regarding the diplomas submitted by the Parliament and by the Government, for promulgation (art.134, § b and § g, and art.135, no.1 and 5);

Chapter II - The State and the Portuguese Constitutional System

• The Head of State (PR) may dissolve the Parliament (art.133, § e, and art.172) and may dismiss the Government (art.133, § g, art.195, no.2, and art.186, no.4).

✓ There is, therefore, an interdependence, with autonomy, between the Head of State (PR), the Parliament (AR) and the Government:

➢ The PR has an initial power of appointment and a final power of dismissal, which means responsibility for the Government;

➢ The PR has the possibility of exercising the right of veto and the power to dissolve the Parliament;

➢ The Parliament and the Government collaborate on legislative initiative, but the Government is responsible before the Parliament.

Chapter II - The State and the Portuguese Constitutional System

III. Organs of Sovereignty

a) Head of State (President of the Republic)

- The Head of State is (art.110) a single-person sovereign organ, consisting of a sole "proprietor", which is representative of the national community.

- The Head of State is, inherently, the Supreme Commander of the Armed Forces, in accordance with the provisions stated in art.120 and art.134, § a).

- He (she) holds a representative and moderator function; he (she) represents the State and ensures its independence and unity; he (she) has the function of ensuring the regular functioning of the institutions (art.120).

Chapter II - The State and the Portuguese Constitutional System

- The Head of State (PR) is the vertex of the political apparatus, which holds a moderator, impartial and independent power, having a direct democratic legitimacy, which results from its designation form - art.121; the electoral system is the two rounds majority (art.126).

- He (she) is elected by all registered citizens, in an election act, with the guarantees of secrecy and universality (art.121, no.1), for Portuguese citizens (excluding those naturalized), older than 35 years (art.122), for a term of 5 years, and with only one possibility of re-election (art.123, no.1, and art.128, no.1).

Chapter II - The State and the Portuguese Constitutional System

- The Head of State (PR) may resign his (her) office by message addressed to the Parliament (art.131, no.1); however, if he (she) resigns, he (she) cannot apply for immediate elections nor for those that take place in a 5-years period, immediately following the resignation (art. 123, no.2).

- Applications for PR are proposed by a minimum of 7500 and a maximum of 15000 registered electors (art.124, no.1), and must be submitted at least 30 days before the date of the election, before the Constitutional Court (art.124, no.2) . In case of death of any of the candidates or any fact that prevents from performing the functions of President, a new electoral process will have to start (art. 124, no.3).

Chapter II - The State and the Portuguese Constitutional System

- The PR shall not be absent from the national territory without the consent of the Parliament or its Standing Committee (*"Comissão Permanente"*), if the former is not running (art.129, no.1). Failure to comply with this consent implies the loss of office (art.123, no.3). This consent is waived in cases of free transit pass or for travelling without official nature of no longer than 5 days, but the PR must, even so, give prior knowledge to the Parliament (art.129, no.2).

- In case of absence from the national territory, the PR is replaced, temporarily, by the President of the Parliament (art.132, no.1).

Chapter II - The State and the Portuguese Constitutional System

- Powers conferred by the Constitution to the Head of State (PR):

Competences regarding other institutions/organs (art. 133):

- Chairing the State Council (*"Conselho de Estado"*);
- Sets election days;
- Addresses messages to the Parliament;
- Chairing the National Defense Supreme Council (*"Conselho Superior de Defesa Nacional"*);
- Dissolves the Parliament;
- Appoints and dismisses the Prime Minister and other Government members;
- Convenes extraordinarily the Parliament.

Chapter II - The State and the Portuguese Constitutional System

Competences to practice own acts (art. 134):

- Serves as Supreme Commander of the Armed Forces;
- Enacts and promulgates laws;
- Requests the Constitutional Court for the assessment of the constitutionality of laws;
- Submits to referendum relevant issues with national interest;
- Declares a State of siege (*"Estado de Sítio"*) or a State of emergency;
- Checks decorations and serves as Grand-Master of the Honorific Portuguese Orders.

Chapter II - The State and the Portuguese Constitutional System

Competences in international relations (art. 135):

- Appoints ambassadors;
- Ratifies international treaties, after being duly approved;
- Declares war in case of effective or imminent aggression, and makes peace.

➢ Finally, it is noted that there is an organ that provides political consultancy to the PR, named the State Council (art.141). The State Council composition is provided in art.142; its organization and operation are established in art.144; competences are set in art.145, based on the provision of advice (art.146).

Chapter II - The State and the Portuguese Constitutional System

b) Parliament (AR)

- The Parliament is the political organ and representative par excellence. There are represented all Portuguese citizens, through elected representatives (art.147 and art.148), accordingly to the *Hondt* proportional method (art.149), featuring a direct democratic legitimacy, since the appointment of their members derives from an universal, direct and secret suffrage.

- Mediation in the Portuguese political system is partisan, once only political parties can submit applications to the Parliament, although they can integrate independent citizens, not belonging to any political party (art.151, no.1). Nobody can stand for more than one constituency of the same nature (art.152, no.2).

Chapter II - The State and the Portuguese Constitutional System

- Parliamentary Groups have a party base (art.180, no.1), and their own parliamentary committees, whatever they are, match the representation of political parties in Parliament (art.178, no.2).

- The Parliament (AR) is an autonomous organ of sovereignty, with an internal competence, constitutionally enshrined in art.175. It comprises:

• The power to draft and approve its own internal By-Laws (*"Regimento Interno"*);

• The power to elect, by a majority of delegates/members in office, the President of the Parliament and other members of the Board of the Parliament;

• Establish a standing committee (*"Comissão Permanente"*) and the remaining committees.

Chapter II - The State and the Portuguese Constitutional System

- The Parliament is a permanent organ, although there are some manifestations or characteristics of discontinuity, particularly of legislative nature (art.167, no.5).

- The legislative sessions have a duration of 1 year and begin, pursuant to art.174, no.1, on the 15th September each year, and end on the 15th June of the following year.

- The term lasts for four legislative sessions (art.171, no.1).

- The Portuguese Parliament, under the name of *"Assembleia da República"* (AR), is a unicameral organ, comprising a single chamber (*"Câmara"*).

Chapter II - The State and the Portuguese Constitutional System

- The Parliament is a collegiate organ (art.116, no.2) constituted by 230 Deputies in office. As a collegiate organ, it can only deliberate with the presence of the legal majority of its members, this is, 116 Representatives (deliberative quorum).

- However, for the approval of any proposal or bill of law, unless there is a special rule, the plurality of votes rule prevails (more votes in favor than against, not counting abstentions for the calculation of the majority) - art.116, no.3.

Chapter II - The State and the Portuguese Constitutional System

- Thus, to approve a draft or a bill of law, in an extreme situation, and having been verified the deliberative quorum, 1 vote in favor, 0 votes against and 115 abstentions is enough.
- Our CRP provides different types of majorities for the approval of their diplomas:

• Relative or Simple Majority - the decisions are taken by the plurality of the votes, or more votes in favor than against, not counting abstentions for calculating the majority (art.116, no.3);

• Specific Majorities - the decisions should be taken by means of a proportion of members in office: 10 members (art.169, no.1); 1/10 - 23 deputies (art.281, no.2, § f); 1/5 - 46 members (art.130, no.2, art.178, no.4, and art.278, no.4); 1/4 - 58 members (art.194, no.1);

Chapter II - The State and the Portuguese Constitutional System

• Absolute Majority – the majority rule requires that half of the members plus one (more than half of the members) must vote in favor of the act - 116 members (art.136, no.2, art.168, no.5, art.174, no.3, art.175, § b, art.192, no.4, and art.195, no.1, § f);

• Qualified Majority - is called an aggravated majority, and typically requires the presence of 2/3 of the members (art.174, no.2) and/or 2/3 members in office (art.130, no.2, *in fine*, art.136, no.3, art.163, § h, art.168, no.6, art.279, no.2 and 4, and art.286, no.1), or 4/5 of the members in office (for the assumption of extraordinary constituent powers - art.284, no.2).

Chapter II - The State and the Portuguese Constitutional System

- In Parliament there are autonomous organic structures with their own powers, including:

- The President of the Parliament (*"Presidente da Assembleia da República"*), which holds, among others, the power to trigger the subsequent abstract review of constitutionality (*"fiscalização abstracta sucessiva"*) and legality, under § b, no.2 of art.281;

- The Table of the Parliament;

- The Permanent Parliamentary Commissions, Eventual or of Inquiry nature, a minimum fifth of members is needed, for these to be created, respecting the limits and conditions of art.181, no.4.

Chapter II - The State and the Portuguese Constitutional System

- The competence of the Parliament finds itself divided by political and legislative issues (art.161), surveillance issues (art.162) and of collaboration with other organs issues (art.163), according to the constitutional terminology.

- The legislative function is the main function of the State. It corresponds to the execution of acts arising from organs which are constitutionally competent, which assume the external form of law. The legislative competence of Parliament is of such importance that some authors even speak of a rule of legislative competence of the Parliament.

Chapter II - The State and the Portuguese Constitutional System

- The legislative competence of the Parliament, of crucial nature, intrinsically parliamentary, is called the absolute competence reserve of the Parliament (art.164), and is nontransferable.

- There are, however, some areas in which the Parliament may delegate in the Government the legislative competence on matters of relative competence of the Parliament (art.165). There are, however, limits to the delegation of powers on the Government:

  - Organic limits – The Parliament may only delegate on the Government;

Chapter II - The State and the Portuguese Constitutional System

- Material limits – The Parliament may only delegate certain matters (those under art.165);

- Formal limits - laws authorizing legislation shall define the subject, the purpose, the extension and duration of the authorization, which can be extended (art.165, no.2), and can not be used more than once (art.165, no.3);

- Time limit - the laws of legislative authorizing can not be used beyond a certain period of time, expiring with the resignation of the Government, with the end of term or the dissolution of the Parliament, and yet, when it is contained in the Law of the State-Budget, with the term of that year (art.165, no.4 and 5).

Chapter II - The State and the Portuguese Constitutional System

c) Government

- It is the exponent of the executive power, of administration and management of collective interests.

- The Government is created from the Parliament and is constitutionally characterized as the organ that conducts the general policy of the country, and as the higher organ of public administration (art.182).

- The Public Administration is characterized, in its turn, as the device or set of organs that aim for the execution of the public interest, whilst respecting the legally protected rights and interests of the citizens (art.265).

Chapter II - The State and the Portuguese Constitutional System

- The Government is a complex organ, as it can function in a singular form, through each of its members, or in a collegial way, through the Council of Ministers (art.200 and following).

- The Government comprises the Prime-Minister (PM), the Ministers, the Secretaries and Assistant Secretaries of State (art.183, no.1). It may include Deputy Prime Ministers (*"Vice-Primeiros-Ministros"*) (art.183, no.2).

- The Government has a hierarchical structure, although this is not administrative in nature, since the PM is situated at the top and then there is a hierarchy of Ministers and other members of the Executive, resulting from the Government's own Organic Law (*"lei orgânica do Governo"*).

Chapter II - The State and the Portuguese Constitutional System

- The PM is appointed by the Head of State (art.187, no.1), after earing the several parties represented in the Parliament, and taking into account the electoral results.

- The PM may propose the appointment art.183, no.2), of the Deputy Prime Ministers, if any, and the Ministers. Any of these Ministers is responsible before the PM, being responsible before the Parliament only on the context of the political responsibility of the Government (art.191, no.2).

- The PM (art.191, no.1) is institutionally responsible before the PR, and politically responsible before the Parliament. Ministers are institutionally responsible before the PM, and politically responsible before the Parliament (art.191, no.2).

Chapter II - The State and the Portuguese Constitutional System

- As regarding the powers of the PM, he is the responsible for running the general policy of the Government and its operation (art.201, no.1).

- The Head of Government submits the Government's program to the Parliament up to 10 days after his appointment (art.192, no.1). This program must be made approved in Parliament, i.e., it cannot be rejected by a majority of deputies in active duty (art.192, no.4).

- It should be noted that the acceptance of resignation of the PM implies the dismissal of the entire Government (art.195, no.1, §b).

Chapter II - The State and the Portuguese Constitutional System

- As the jurisdiction of the Government, there are the political competences (art.197), the legislative skills (art.198) and the administrative ones (art.199).

- The Government is a constitutional organ, autonomous and solidary (governmental solidarity), in relation to the Government's program and in relation to the resolutions taken by the Council of Ministers (art.189).

- In the structure of the Government there is a political predominance of the PM, who is also the President of the Council of Ministers, without putting into question the principle of the Office (*"Gabinete"*) or the principle of the College (*"Orgão Colegial"*) , and without affecting the distribution of competences among Ministers (art.201, no.2).

Chapter II - The State and the Portuguese Constitutional System

- The Government shall terminate its mandate at the end of its term, or, as stated in art. 195, no.1:

- Acceptance by the Head of State of the resignation of the Prime Minister;
- His death or lasting disability;
- Rejection of the government's program;
- No adoption of a motion of confidence or the approval of a motion of censure, by an absolute majority of members in office;
- It also terminates when having been fired by the President, when necessary to ensure the smooth functioning of the democratic institutions (art.195, no.2).

Chapter II - The State and the Portuguese Constitutional System

- The CRP establishes three situations in which the Government is not in the fullness of its constitutional powers, that is to say, it can not exercise certain competences, especially those related to political and legislative innovation – these are called the Management Governments:

• Governments that are dismissed under the President's power of dismissal;

• Governments without a program assessed in Parliament, but already appointed;

• Resigning Governments, that is, those directly related to the PM's exercise of power of dismissal.

Chapter II - The State and the Portuguese Constitutional System

- These governments can only perform acts of current management, regarding public affairs related to urgent needs (art.186, no.5).

d) Courts

- Empowered to administer justice in behalf of the people (art.202).
- The Courts are independent and subject only to law, i.e., they do not dependent on any other sovereign organ (art.203), and therefore, their decisions are binding on all public and private entities, prevailing over all other authorities (art.205, no.2).

Chapter II - The State and the Portuguese Constitutional System

- Judges are:

- Non-removable (art.216, no.1), i.e., they can not be transferred, suspended, retired or dismissed, unless in the cases provided in the law;
- They can not be held responsible for their decisions (art.216, no.2);
- They are conducted by the Board of Judiciary (art.218), except for the judges of the Constitutional Court and the judges of the Court of Auditors. For these two, one may speak of "self-government", that is, each one of these Courts is up to it to exercise disciplinary power over their judges, even when those acts are committed in the exercise of other functions.

Chapter II - The State and the Portuguese Constitutional System

- Categories of Courts (art.209):

- **Constitutional Court** (art.221 and following)

• Its composition is established in the Constitution (art.222, no.1). It is composed of thirteen judges (who hold the title of counselors; six of which must necessarily come from other courts - art.222, no.2).

• Ten judges are directly appointed by the Parliament, while the remaining three are co-opted by the early (art.222, no.1, 2nd part).

Chapter II - The State and the Portuguese Constitutional System

- The election of those requires a majority of 2/3 of the members present at of the Parliament (it must be superior to the absolute majority of those which are in active duty (art.163, § h).

- The mandate of the judges of the Constitutional Court lasts for nine years and is not renewable (art.222, no.3). The President and Vice-President of the Constitutional Court are elected by the judges and serve for a period equal to half the term of office of a judge of the Constitutional Court (four and a half years), with possibility of reappointment (art.222, no.4).

Chapter II - The State and the Portuguese Constitutional System

• The Constitutional Court has the "competence and nuclear feature" of reviewing the constitutionality and legality (though only certain forms) of the legal rules that constitute the Portuguese legal system in general, as well as of certain legal standards or normative omissions (art.223, no.1). Its competences cover:

- Preventive review of constitutionality (art.278, no.1 and 2);
- Successive abstract control of constitutionality or legality (art.281);
- Specific control of constitutionality or legality (art.280);
- Finding of any unconstitutionality by omission of any "necessary legislative measures to make constitutional rules executable"(art.283).

Chapter II - The State and the Portuguese Constitutional System

- **Judicial Courts:** Supreme Court – Lisbon (*"Juízes Conselheiros"*); Courts of Appeal (*"Tribunais de Relação"*) - are called by the name of the municipality in which they are installed – *"Juízes Desembargadores"* - Lisboa, Oporto, Coimbra, Évora and Guimarães); Judicial Courts of 1st Appeal (District Courts - are called by the name of the municipality in which they are installed – *"Juízes de Direito"* – art.210 and art.211.

• The Judicial Courts are "common courts in civil and criminal issues" (art.211, no.1, 1st part), but have also a residual jurisdiction, negatively determined, since it is understood that they comprise all matters that are not assigned to other courts (art.211, no.1, 2nd part).

Chapter II - The State and the Portuguese Constitutional System

- The District Courts (*"Tribunais de Comarca"*) may unfold in judgments, of general, specialized or specific jurisdiction, or in sections of specific competence.

- The judgments of expertise (*"juízos de competência"*) can assume two kinds: those of specialized civil competence and those of specialized criminal expertise.

Sections (*"varas"*) may be civil, criminal or of mixed competence (civil and criminal); judgments of specific jurisdiction may be civil, criminal, of civil appeal (*"pequena instância cível"*), and of criminal and execution appeal (*"pequena instância criminal*").

Chapter II - The State and the Portuguese Constitutional System

• These are the types of Specialized Courts (*"Tribunais de Competência Especializada"*):

- Courts of Criminal Justice (*"Instrução Criminal"*);
- Family Courts;
- Courts of Minors;
- Courts of Work;
- Courts of Trade;
- Courts of Intellectual Property;
- Courts of Competition, Regulation and Supervision;
- Maritime Courts;
- Courts for enforcement of penalties (*"Tribunais de Execução de Penas"*).

Chapter II - The State and the Portuguese Constitutional System

- Supreme Administrative Court and other Administrative and Tax Courts (art.212).

• Different species of this court order:

- The Supreme Administrative Court - Lisbon;

- The Central Administrative Courts (North – Oporto – and South - Lisbon);

- The Administrative and Tax Courts.

• Like Judicial Courts, also the Administrative and Tax Courts are prioritized for purposes of appeal, occupying the Supreme Administrative Court the higher position in the hierarchy.

Chapter II - The State and the Portuguese Constitutional System

- **Court of Auditors** – Tribunal de Contas (art.214);

• Supreme organ responsible for reviewing the legality of public expenditure, contained in the state budget; and of the accounts that the law commands.

• Its functions are not only of judicial nature, also integrating its competences: providing opinion on the General State Account and on the accounts of the Azores and Madeira (art.214, no.1, § a and § b); endorsing the opinions on draft legislation (for financial matters) issued by request of the Parliament or the Government.

Chapter II - The State and the Portuguese Constitutional System

- **Maritime Courts**

• Compensation by damages caused or suffered by ships, boats and other floating devices; construction, repair or purchase and sale contracts of vessels; maritime transport contracts; contracts for maritime use of ships, boats and other floating devices; insurance contracts for ships, boats and other floating devices; privileges and mortgages on ships.

- **Courts for the Resolution of Conflicts**

• They only handle conflicts of jurisdiction.

Chapter II - The State and the Portuguese Constitutional System

• There is a conflict of jurisdiction when two or more authorities, pertaining to various activities of the State, arrogate to themselves or decline the power to get to know the same question, and when two or more courts, integrated in different juridical orders, arrogate to themselves or decline the power to know the same question.

❑ **Arbitration Courts or Arbitration Centres**

• Of non-state nature, although the arbitrators decide accordingly to applicable laws, unless both parties entitle them to decide according to equity – seeking justice of the case itself, due to its particularities.

• Appeal to arbitration as an alternative means for resolution of a dispute – out of Court settlement of conflicts.

Chapter II - The State and the Portuguese Constitutional System

- These Courts possess a mechanism for a faster realization of justice and with a more flexible and less formalistic process than those that follows the "ordinary justice“ (in order to decongest the courts).

- Arbitration may take various forms:

  - Voluntary Arbitration - the court's jurisdiction results of arbitration by the parties, by agreement ("Arbitration Convention"), committing the dispute to the decision of the Arbitrators.

  - Necessary Arbitration - when is the law itself that requires the submission of the dispute to arbitration.

Chapter II - The State and the Portuguese Constitutional System

- Institutionalized Arbitration - when courts are already constituted (arbitration centers - linked to consumption, construction, claims), the parties can draw upon these, if agreed.

- Non-institutionalized Arbitration – when arbitral courts are constituted *ad hoc* for the judgment of a particular case or a set of disputes.

- ***"Julgados de Paz"***

• They are different from judicial courts.

Chapter II - The State and the Portuguese Constitutional System

- Their performance is dedicated to allow the civic participation and to stimulate a fair settlement of disputes, by agreement of the parties.

- They comprise a conflict mediation service, which aims, precisely, to stimulate the resolution of conflicts, with preliminary nature, by agreement of the parties.

The mediation consists of a out of court modality of dispute resolution, characterized by the active and direct participation of the parties, in order of finding themselves, yet with the aid of a mediator, a negotiated and friendly solution to the conflict of their dispute.

Chapter II - The State and the Portuguese Constitutional System

- Procedures taken in *"Julgados de Paz"* obey, by law, to the following guiding principles: simplicity, appropriateness, informality, oral sense and absolute procedural economy.

- *"Julgados de Paz"* are not subject to "strict criteria of legality"; if there is an agreement between parties and the amount of the claim does not exceed half the purview (*"alçada"*) of the Courts of 1st Appeal (€ 2.500), the judges can decide according to judgments of fairness.

Chapter II - The State and the Portuguese Constitutional System

- **Mediation (*"Mediação"*)**

• Provides a means of conflict resolution, in which the parties in conflict can choose a third party, the mediator, which is impartial and neutral, without power of decision, in order to help in developing the solutions for themselves.

• The mediator is responsible for creating the necessary confidence, managing emotions, conveying respect and empathy, adopting a listening and interested attitude, showing optimism in settling the question.

• It assumes great usefulness in overcoming situations with legal complexity, with blockages related to confidential businesses, or those which present some difficulties in obtaining evidence.

Chapter II - The State and the Portuguese Constitutional System

IV. Main relationship between Sovereign Organs

a) Head of State (PR) vs Parliament (AR)

- The PR can dissolve the Parliament (art.133, § e and art.172);
- He convenes extraordinary Parliament sessions (art.133, § c);
- He enact, vets and requires preventive control of the Parliament's laws (art.134, § b, § g and art.136);
- He promulgates Parliament's laws in the Republic's Diary (art.134, §b and art.119, no.1, § c).

b) Head of State (PR) vs Government

- The PR can appoint the Prime Minister (art.133, § f and art.187);
- He can dismiss the Government and the Prime Minister (art.133, §g, art.195, no.2, art.186, no.4);

Chapter II - The State and the Portuguese Constitutional System

- He enacts, vets and requires preventive control of decrees-law of the Government (art.134, § b and § g and art.136);
- He promulgates the decrees-law of the Government in the Republic's Diary (art.134, § b and art.119, no.1, § c).

c) Head of State (PR) vs Courts

- He appoints and dismisses the President of the Court of Auditors and the Attorney General of the Republic, under the Government's proposal (art.133, § m);
- He appoint two citizens to become members of the Supreme Judicial Board (art.133, § n);
- For crimes committed during the exercise of his functions, the Head of State only responds before the Supreme Court (art.130, no.1).

Chapter II - The State and the Portuguese Constitutional System

d) Parliament (AR) vs Government

- The Government is politically responsible before the Parliament (art.191);
- The rejection of the Government's program in the Parliament implies its dismissal (art.195, no.1, § d);
- The rejection of a motion of confidence to the Government, by the Parliament, implies his resignation (art.195, no.1, § e);
- The approval, by the Parliament, of a censure to the Government, implies his resignation (art.195, no.1, § f);

e) Parliament (AR) vs Courts

- They elect the members of the Prosecutor's Board (art.163, § g);

Chapter II - The State and the Portuguese Constitutional System

- They elect, by a majority of two thirds of the Members of the Parliament, as long as it exceeds the absolute majority of Deputies in office, ten judges of the Constitutional Court and seven members of the Supreme Judicial Council (art.163, § h).

f) Government vs Courts

- The Government is incumbent upon the Parliament of proposing the establishment of budget appropriations for the different organs of the State. Therefore, the financial, budgetary and human resources allocated to the activity of the courts heavily rely on governmental decision (art.105, no.4).

Chapter II - The State and the Portuguese Constitutional System

V. The Azores and Madeira

- The Autonomous Regions are part of the Administration State and are considered legal persons in public law, of territorial and population base, in accordance with the provisions of art.227, empowered with their own constitutionally fixed powers.

- The Legislative Assembly and the Regional Government are organs of self-government of the Autonomous Regions (art.231, no.1). In each region there is a Representative of the Republic, appointed by the President, after consultation with the Government (art.230).

Chapter II - The State and the Portuguese Constitutional System

- The legislative powers of the Regional Parliament (ALR) versa on matters of specific interest to the Autonomous Region, and are not reserved to the Parliament or the Government (art.112, no. 4, and art.227, no. 1, § a of the CRP).

- Their legislative power is enshrined as follows:

  - Legislative Primary Power – art.272, no. 1, § a;

  - Legislative Secondary or derived Power – art.272, no. 1, § b and no. 2, 3 and 4 – performed under a legislative authorization bill.

Chapter II - The State and the Portuguese Constitutional System

- Legislative Supplementary Power (art.227, no.1, § c), exerted to develop, depending on the specific interest of the regions, the laws of bases.

VI. Portuguese Public Administration

- The CRP dedicates Title IX - Part III to Public Administration, setting forth the basic principles of activity and organization.

- The Public Administration (AP) aims to pursue the public interest, respecting the rights and legally protected interests of citizens (art.266, no.1); their organs are subordinated to the CRP and the law (principle of legality), and to respect of the principles of equality, proportionality, justice, fairness and good faith (art.266, no.2).

Chapter II - The State and the Portuguese Constitutional System

- The Public Administration (AP) is structured in a way to avoid bureaucratization, bringing closer the services to the citizens. The AP is, thus, decentralized and non concentrated (art.267, no.1 and 2).

- The AP is subject to its own autonomous branch of Public Law – the, Administrative Law – which invests the administrative organs with the privilege of previous execution. This privilege enables the AP's organs of imposing their decisions, even by use of public force, even if individuals disagree, regardless of a prior resource prior to Courts.

Chapter II - The State and the Portuguese Constitutional System

- In addition, there is a proper forum, and, therefore, specialized Courts, that comprise their own judicial category – the Administrative Courts (art.209, no.1, § b).

- There are ample guarantees that protect the individuals when they come into contact with the different structures of the Public Administration (art.268).

- Having in mind that the Government is the upper organ of the AP, there are several types of Public Administration (art.199, § d,):

Chapter II - The State and the Portuguese Constitutional System

a) Direct State Administration (*"Administração Directa do Estado"*)

- Organs and services of the public State corporation - Government, Prime Minister, Secretaries of State, Sub-secretaries of State, General Directorates, Regional Directorates, General Inspection Services, …

b) Indirect State Administration (*"Administração Indirecta do Estado"*)

- Separate legal entities, created by the State, under the power of superintendence of the Government, while upper organ of the AP - public institutes (ERSE, ANACOM, BP, CMVM, AC), some public associations, public foundations, public business entities, INE, LNEC, …

Chapter II - The State and the Portuguese Constitutional System

c) Autonomous State Administration (*"Administração Autónoma"*)

- Comprising all entities subject only to the powers of supervision (surveillance or monitoring) of the Executive - Autonomous Regions of Madeira and the Azores, and local municipalities.

- In Portugal, local municipalities are the local Parishes (Freguesias), the Municipalities and the Administrative Regions (art.236).

- Under constitutional terms, the Parish Assembly and the Parish Council are the Parish organs (art.244, art.245 and art.246).

Chapter II - The State and the Portuguese Constitutional System

- The organs of the Municipality are the Municipal Parliament, the City Council and the Mayor (arts.250, 251 and 252).

- Administrative Regions have the Regional Parliament and the Regional Council (arts.259, 260 and 261).

- It should also be noted that, in addition to these municipal structures, there are others who do not have the same nature, which are the metropolitan areas.

There are two types of metropolitan areas:

- Large Metropolitan Areas;
- Urban Communities.

Chapter II - The State and the Portuguese Constitutional System

- The organs of the major metropolitan areas are: the Metropolitan Parliament, the Metropolitan Council, and the Metropolitan Board.
- The organs of the urban communities are: the Urban Community Parliament, the Board of the Urban Community and the Council of the Urban Community.

d) Independent State Administration

- Administrative structures for which the Government does not exercise any of the constitutionally provided organization powers – National Elections Commission, Justice Provider (art.23).

Chapter II - The State and the Portuguese Constitutional System

VII. Prosecutor (Public Ministry) and Attorney General Office

- The Public Ministry (*"Ministério Público"*) is an autonomous magistracy (but not independent), which is responsible for representing the State, exercising criminal proceedings and defending the democratic legality (art.219, no.1).

- The Attorney General Office (*"Procurador-Geral da República"*) is the highest authority, this is, the dome structure of the Prosecutor (art.220, no.1). In addition to the Attorney General, there are other structures such as the Supreme Council of the Public Prosecution Service, the Advisory Council, the Juridical Auditors and the Administrative Support Services.

Chapter II - The State and the Portuguese Constitutional System

- The Attorney-General holds a mandate of six years, chairing the Attorney General Office (art.220, no.2 and 3), and is appointed and dismissed by the Head of State, under proposal of the Government (art.133, § m).

VIII. Military and Security Administration

- The CRP gives the PR the function of Supreme Commander of the Armed Forces (art.120 and art.134, § a), this is to say, it assigns the Head of State the legitimacy to intervene in the area of Military administration that has no parallel in Civil Public Administration domains, where the Government is the top organ (art.182).

Chapter II - The State and the Portuguese Constitutional System

- The Head of State presides the National Defense Council (art.133, § o) and appoints and dismisses, by proposal of the Executive, the highest military leaders, such as the General Chief of the General-State of the Armed Forces and the Vice-Chief, when there is one, and the Chiefs of General-State of the three branches of the Armed Forces (art.133, § p).

- Furthermore, the CRP provides, in Part III, the Title X, which is all about "National Defense". It is here that we can find more specific references on the Supreme Council of National Defense (art.274) and on the Armed Forces and Military Service (art.275 and art.276).

Chapter II - The State and the Portuguese Constitutional System

- Regarding the internal security functions, there are some different forces in nature. They are:

- National Guard (GNR);
- Public Security Police (PSP);
- Marine Police;
- Prison Guard Corps;
- Judicial Police;
- Foreigners and Borders Service (SEF);
- Municipal Police;
- Information System of the Portuguese Republic (SIRP);
- Security Intelligence Service (SIS);
- Intelligence Strategic Defense Service (SIED);
- Authority for Food and Economic Safety.

Chapter II - The State and the Portuguese Constitutional System

4.2.6. Part IV - Guarantee and Revision of the Constitution – art.277 to art.289

- The Constitution can not be immutable, for it will have to adjust to the historical evolution of society and the law itself, taken as a whole.

- Regarding the possibility of a constitutional review, different types of constitutions arise:

• Flexible Constitutions – they are reviewed like any ordinary law and differ only in their subject and content. There are no limits to the process of reviewing, or these are very faint;

Chapter II - The State and the Portuguese Constitutional System

- Rigid Constitutions – they have strong normative limits to the review process, disabling, by this reason, the revision itself;

- Semi-rigid constitutions – they hold limits to the constitutional revision, but this revision is still possible in certain moments, being respected various limits.

➢ The Portuguese Constitution is semi-rigid, because it can be reviewed, regarding the limits established in art.284. and following.

Chapter II - The State and the Portuguese Constitutional System

- Power of constitutional review - is the faculty of changing or modifying the rules of the formal Constitution. This role falls under the scope of the Parliament (art.161, § a).

- Constitutional Revisions - 1982, 1989, 1992, 1997, 2001, 2004, 2005.

- The CRP provides limits of diverse nature to its revision. They are:

• Formal Limits - The Constitution may only be reviewed through a process that must be different from the ordinary law-making process (art.161, § a, arts.285, 286 and 287);

Chapter II - The State and the Portuguese Constitutional System

- Time limitations - The Constitution may only be reviewed within certain time limits - ordinary revision - or out of them, if a broad consensus is to be attained - extraordinary review (art.284);
- Circumstantial limits - state that the Constitution can not be revised in periods of crisis or political or social serious anomaly (arts.19 and 289);
- Material limits – The material Constitution, this is to say, the great principles that comprise the Constitution, can not be revised, otherwise this could be permitting the creation of a new Constitution (art.288).

4.2.7. Final and transitional provisions – art.290 to art.296

Chapter II - The State and the Portuguese Constitutional System

- AMARAL, Diogo Freitas do [2000]. Sumários de Introdução ao Direito. 2.ª ed. Lisboa: FDUNL;
- AMARAL, Diogo Freitas do [2004]. Manual de Introdução ao Direito. Coimbra: Almedina;
- CARVALHO, Luís Nandim de/et al. [1998]. Introdução ao Estudo do Direito e do Estado. Lisboa: Universidade Aberta;
- DUARTE, Maria Luísa [2003]. Introdução ao Estudo do Direito. Lisboa: Associação Académica da Faculdade de Direito de Lisboa;
- FONTES, José [2009]. Teoria Geral do Estado e do Direito. 2.ª ed. Coimbra: Coimbra Editora.
- SILVA, Germano Marques de [2009]. Introdução ao Estudo do Direito. 3.ª ed. Lisboa: Universidade Católica Editora;
- SOUSA, Marcelo Rebelo de/ GALVÃO, Sofia [2000]. Introdução ao Estudo do Direito. 5.ª ed. Lisboa: Lex.
- VICENTE, Dário Moura [2011]. Direito Comparado. Coimbra: Almedina.