



Academic Year 2017-2018

Syllabus

Fundamental Rights

CFU 6

Prof. Andrea Buratti (coord.)

### Course Description

The course deals with fundamental rights' theory in a comparative law approach: after a general overview on the historical development of the fundamental rights in western constitutionalism, and a general classification of the main legal categories in use in this field, the course focuses on four main areas of interest.

A first group of lectures will regard the Courts (constitutional and supranational), and their role in the protection of fundamental rights, both in national as well as in European scenario. Then, substantive issues related to the protection to fundamental rights in contemporary years will be analysed: a) media laws, b) gender issues and the principle of non-discrimination; c) the International criminal justice.

In dealing with all these topics, the teachers will take into consideration national and supranational law, case-law and theoretical analysis.

### Teaching Method

For each topic, a guest professor chosen on the base of the high quality of his/her research, will be invited to deliver the lectures.

The course is reserved to a very limited number of students (5-10): it will allow professors to teach seminars. This method will require students to prepare the classes well in advance, through the compulsory reading of the materials pointed out by the professors. The preparation will be evaluated in class by each professor, through questions/answers during the lectures.

Attendance is mandatory and is considered in the final grade (see "Assessment" section for the non-attending students).

### Schedule of topics

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- Topic 1** Fundamental Rights: an Overview (4 hours).  
Prof. Andrea Buratti, University of Rome Tor Vergata.
- The generations of rights.
  - Constitutional guarantees of fundamental rights.

- Topic 2** Courts and rights: national and international scenario (12 hours).  
Prof. Giorgio Repetto, University of Perugia.
- Rights and Courts from national Constitutions to international constitutional law: setting the scene.
  - Constitutional integration at national and supranational level: rights and courts in the European laboratory.
  - Normative hierarchies, institutional relationships and forms of judicial dialogue.
  - The European Convention on Human Rights and the Strasbourg Court: origins, development, transformations.
  - Access to the Court and formal subsidiarity.
  - Methods of interpretation of the Convention and substantial subsidiarity.
  - Case-law analyses.

- How to cope with constitutional complexity? Judicial dialogues and unstable balances.

References:

1. P. Alston, *The European Convention System*, in Id. And R. Goodman, *International Human Rights*, Oxford University Press, 2013, pp. 891-977.
2. R. Schütze, *European Constitutional Law*, 2<sup>nd</sup> ed., Cambridge University Press, 2016, pp. 343-393 (Judicial Powers I: (Centralised European Procedures)).

**Topic 3** The European Court of Justice and the Charter of Nice.

- March 22<sup>nd</sup> 2018: Visit to the European Court of Justice, Luxembourg, followed by a lecture by Prof. Krystyna Kowalik - Institute for Legal Studies (Warsaw), Judge of the General Court of the EU: “The European Court of Justice and the Charter of Nice”.

**Topic 4** International criminal Justice (8 hours).

Prof. Boris Burghardt – Humboldt University of Berlin.

- International criminal law: concept, task, legitimacy
- From Nuremberg to Rome: History and evolution of international criminal justice
- The International Criminal Court
- Crimes under international law: Genocide, crimes against humanity, war crimes and the crime of aggression (2 hrs)
- “Men, not abstract entities”: Individual criminal responsibility for crimes under international law
- The honeymoon is over: International criminal justice under pressure
- International criminal law and transitional justice

References:

3. M. Damaska: *What Is the Point of International Criminal Law?*, in: Chicago-Kent Law Review 83 (2008), pp. 329-365.
4. F. Jessberger/J. Geneuss, *The Many Faces of the International Criminal Court*, in: Journal of International Criminal Justice 10 (2012), pp. 1081-1094.
5. D. Robinson: *A Cosmopolitan Liberal Account of International Criminal Law*, in: Leiden Journal of International Law 26 (2013), pp. 127-154.
6. C. Tomuschat, *The Legacy of Nuremberg*, in: Journal of International Criminal Justice 4 (2006), pp. 830-844.

**Topic 5** Media Laws (10 hours).

Prof. O. Pollicino – Bocconi University of Milan.

Following the advent and spread of communication and information technology, this course has a double aim: on the one hand, to examine constitutional provisions and case law and legal theory related to the fundamental rights and civil liberties at heart of information society (freedom of expression and privacy overall). On the other hand, to provide students with an overview of all the issues related to the new technology and in particular the implications related to Internet and to the protection of fundamental rights on the web.

- Freedom of expression in Europe and in the US.
- The content and limits of freedom of expression: hate speech.
- Journalism: freedom of the press and freedom of information.
- The access to the Internet: new constitutional freedoms.
- The television Market: the Italian legal Regime.
- Internet and jurisdiction. Between globalization and localization.
- Data protection and data retention: the European scenario.
- Who controls the Internet? The ISPs legal regime.
- Cybercrime. The Google Vivi Down saga.

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- Copyright protection in the age of the Internet.
  - The television market: The Audiovisual Media Service Directive.

References:

7. *Introduction to the EU Internet Law*, ed. Jan Trzaskowski; Andrej Savin; Björn Lundqvist; Patrik Lindskoug. Copenhagen: Ex Tuto Publishing 2015.

**Topic 6** Gender and Sexual Orientation Equality Issues: A Comparative Law analysis (8 hours).  
Prof. Angioletta Sperti – University of Pisa

In the last fifteen years, constitutional issues regarding sexual orientation equality emerged on a global scale. The pace of recognition of equality and fundamental rights of LGBTI people, both at judicial and legislative level, has dramatically increased across different jurisdictions. This part of the course will focus on scholarly and legal debate on sexual orientation equality, taking into consideration decisions by constitutional and international courts, from the decriminalization of sexual acts to the recognition of same-sex marriage and parental rights for same-sex couples. The purpose is to provide an overview of the main issues that have been brought to the attention of the courts in the last few years, focusing on the analogies and differences in their approach to human dignity, privacy, liberty and equality of LGBTI people and their relationship with national legislators.

- The fight for sexual orientation equality compared to other civil rights battles of the past
- Constitutional courts and their role in the advancement of LGBTI rights
- Issues of tradition and evolutionary interpretation of the constitutional clauses in the definition of “family” and “marriage”
- A right to same-sex marriage or a “general” right to marriage?
- Constitutional courts and national legislators in the recognition of marriage equality
- Courts and parental rights of same-sex couples
- After same-sex marriage: the role of courts in enforcing marriage equality and accomodating claims of conscientious objection.

References:

8. A. Sperti, *Constitutional Courts, Gay Rights and Sexual Orientation Equality*, Oxford, Hart Publishing, 2017, pp. 80-171.

### Readings and Materials

All the 8 readings listed above are compulsory readings. Please take note that the reading materials must be studied before the beginning of the related lectures: professors will evaluate the preparation of the students during the lectures.

### Assessment

- For Attending students: Attending students must be present at least to 80% of classes. An oral final exam will be held, covering the whole program. The final grade will take into consideration: a) the oral final exam (50%); attendance, active participation and in-class answers/questions, as evaluated by all the Professors in an “evaluation grid” that will be delivered at the end of their lectures (50%).
- For Non-Attending students: An oral final exam will be held, covering the whole program. The final grade will take into consideration the whole program and all the 5 reading materials pointed out in the “Schedule of Topics” section.

**Erasmus students**

Erasmus students are welcome. They must contact the secretary of the Global Governance program in order to register to the exam.

**Office hours**

Prof. Buratti receives students on appointment: [burattiandrea@hotmail.com](mailto:burattiandrea@hotmail.com). The guest professors will make their email address available during the lectures.