



Syllabus
Fundamental Rights
CFU 6
Prof. Andrea Buratti

Course Description

The course deals with (i) the historical and theoretical foundations of fundamental rights in the national and supranational arena, (ii) their legal structures, and (iii) the main contemporary challenges in a comparative law approach.

Due to the increasing relevance of the courts in the adjudication of fundamental rights, the course will focus on the Courts (constitutional, supreme, supranational), and their role in the protection of fundamental rights, both in national as well as in supranational scenario. Then, substantive issues related to the protection to fundamental rights in contemporary years will be analysed.

Teaching Method

The course is reserved to a limited number of students: it will allow professors to teach seminars. The study and analysis of case law will be the main tool of teaching methodology. 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 at the beginning of western constitutionalism
1. “Liberty before liberalism”: the ancient roots of modern theory of fundamental rights; liberties of the ancients and liberties of the moderns. The different traditions of western constitutionalism.

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- Topic 2** The European tradition
2. The generations of rights and the constitutional guarantees of rights.
 3. Fundamental rights and constitutional justice in the post II World War. The open constitutional state and the European Convention for the protection of human rights.
 4. The German experience: the notion of *Grundrechte*. The proportionality principle. The increasing relevance of the direct access to the BVG.
 5. The Italian experience: introduction and case-law analysis (ICC, Judg. n. 238/2014).
 6. The Spanish experience: introduction and case-law analysis (ETC, Judg. n. 48/2003).
 7. The French Experience: the republican tradition and the *bloc de constitutionnalité*; the relevance of the ECHR; the reform of the *Conseil Constitutionnel*.
 8. The UK experience: the Human Rights Act and the Constitutional Reform Act.

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- Topic 3** The American tradition
9. The philosophical foundations of American tradition of fundamental rights. The judicial review of legislation.
 10. From the Bill of Rights to the 14th Amendment.
 11. The equal protection clause.
 12. Incorporation and the due process clause.
 13. A new role for human dignity?
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- Topic 4** The international protection of fundamental rights
14. The post II World War and the spreading of human rights: the international system of protection of fundamental rights.
 15. New traditions of fundamental rights and the role of comparative judicial dialogue: the cases of Israel and India.
 16. International criminal justice
 17. American Convention of Human Rights (1969)
 18. African Charter of the Rights of Men and Peoples (1981)

- Topic 5** Courts and rights: the European supranational scenario
19. Rights and courts in the European laboratory: integration of EU law and ECHR in national legal orders.
 20. The European Convention on Human Rights and the Strasbourg Court: origins, development, transformations.
 21. Case-law analyses.
 22. Case-law analysis.
 23. The EU system of protection of fundamental rights: the common constitutional traditions as general principles of EU law.
 24. Case-law analysis.
 25. The Charter of Nice.

Readings and Materials

1. A. Barak, Proportionality. Constitutional Rights and Their Limitation, Cambridge University Press, 2012.
2. C. Amalfitano, General Principles of EU Law and the Protection of Fundamental Rights, Elgar, 2018.
3. G. Repetto (ed.), The Constitutional Relevance of the ECHR in Domestic and European Law, Intersentia, 2013.

Assessment

- For Attending students: Attending students must be present at least to 75% of classes. An oral final exam will be held, covering the whole program and based on materials discussed in class. 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 reading materials pointed out in the Syllabus.

Office hours

Prof. Buratti receives students on appointment: burattiandrea@hotmail.com.

NOTE: Erasmus or non-Global Governance students who would like to attend one or more courses and take one or more exams need to contact the Secretariat of Global Governance by e-mail global.governance@uniroma2.it for registration and inform the Professor of the course. They are required to sign a code of conduct like all Global Governance students, accepting all values and rules. Please read it carefully before enrolling.

Notice that attendance is required from the very first lesson and you need to attend at least 80% of the course to be considered an attending student.