



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 analyzed.

Learning Objectives

The course is aimed at developing students' skills in: (i) understanding and contextualizing fundamental rights-based issues, taking into account the historical framework, culture and geopolitical conditions, the legal system and the different values and interests at stake; (ii) understanding the relevant case-law by different international and national supreme Courts; (iii) analyzing and presenting human rights related issues with proficiency in the legal lexicon and through a historical and comparative method.

Teaching Method

The study and analysis of fundamental rights-base case-law will be the main teaching method. 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 students will interact with the professor and among themselves through presentations and questions/answers during the lectures.

Attendance is mandatory and is considered in the final grade (see "Assessment" section of this Syllabus).

Schedule of Topics

Topic 1	Introduction <ol style="list-style-type: none">1. Fundamental Rights: definitions. Fundamental rights at the origins of western constitutionalism.
Topic 2	The European tradition <ol style="list-style-type: none">2. The generations of rights and the constitutional guarantees of rights. Constitutional protection of rights in the post second World War.3. The Italian experience.4. The French experience.5. The German experience.6. The British experience.7. Focus on the concept of "militant democracy".

Topic 3	<p>The American tradition</p> <ol style="list-style-type: none"> 8. The philosophical foundations of American tradition of fundamental rights. The judicial review of legislation. From the Bill of Rights to the 14th Amendment. 9. The 14th Amendment: the equal protection clause. 10. The 14th Amendment: Incorporation and the due process clause. 11. Focus on the case law.
Topic 4	<p>The international system protection of human rights</p> <ol style="list-style-type: none"> 12. The UN system. 13. The regional systems. 14. Focus: the right to asylum. 15. International criminal justice.
Topic 5	<p>Courts and rights: the European supranational scenario</p> <ol style="list-style-type: none"> 16. The European Convention on Human Rights and the Strasbourg Court: origins, development, transformations. The domestic relevance of ECHR: ICC, Judg. n. 347 and 348/2007. 17. Focus: Freedom of religion, pluralism, secularism in the ECHR's case law. ECHR, <i>Leyla Sabın v. Turkey (GC)</i>; <i>S.A.S. v. France</i>; <i>Lautsi and others v. Italy (GC)</i>. 18. Focus: denial of the Holocaust in the ECHR's case law and in national jurisdiction: ECHR, <i>Garaudy v. France</i>; <i>Perincek v. Switzerland (GC)</i>; <i>Fatullayev v. Azerbaijan</i>. 19. The EU system of protection of fundamental rights: the common constitutional traditions as general principles of EU law. ECJ, <i>Omega</i> and <i>Schmidberger</i>. The Charter of Nice. The <i>Data Protection</i> case. The scope of application of the Charter: ECJ, <i>Siragusa</i> case. Rights and courts in the European laboratory: integration of EU law and ECHR in national legal orders. ECJ, <i>Costa v. Enel</i>; The counterlimits doctrine and its functioning: the European arrest warrant cases (ECJ, <i>Melloni</i> case); the “Taricco” saga. 20. Focus: Human dignity, the European approach v. the American approach (SCOTUS, <i>Brown v. Entertainment Merchant Ass.</i>). 21. Judicial dialogue and convergence: toward common patterns of protection of human rights: the Proportionality principle.

Readings and Materials

Students must own a basic knowledge of western constitutionalism and constitutional law. For this preliminary study see A. Buratti, *Western Constitutionalism*, Springer-Giappichelli, 2nd ed., 2019.

1. C. Krause – M. Sheinin, *International Protection of Human Rights: A Textbook*, Abo Akademi for Human Rights, 2nd ed., 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 ECHR in domestic and European law*, Intersentia, 2013.

Assessment

- For Attending students: Attending students must be present at least to 75% of classes. The final grade will take into consideration: a) attendance (10%); b) active participation in class (20%); c) in-class presentations and questions and answers (40%); d) final discussion of a case (30%).
- For Non-Attending students: An oral final exam will be held, covering the whole program and the reading materials. 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.