



Academic Year 2023-2024

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) the definitions of fundamental rights, between universalism and relativism, (iii) the features of fundamental rights' legal protection in national and international law, and (iv) the main contemporary challenges in a comparative law approach, both regarding the most debated substantive issues as well as having regard to legal mechanism of protection.

Due to the increasing relevance of the judiciary branch in the adjudication of fundamental rights, the course will focus on the case law of the Courts (constitutional, supreme, supranational). 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 frameworks, culture and geopolitical conditions, the legal systems 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 methodology.

Teaching Method

The study and analysis of fundamental rights-based case-law will be the main teaching method. This method will require students to prepare classes well in advance, through the compulsory reading of the materials pointed out by the professor. The students will interact with the professor and among themselves through presentations and questions/answers during the lectures.

Schedule of Topics

Section 1	Theoretical issues in fundamental rights discourse. Universalism and particularism in the concept of fundamental rights
Section 2	Fundamental rights in the European tradition: Constitutional Settings. The Emergence of the notion of human dignity. Balancing fundamental rights
Section 3	Fundamental rights in the American tradition: Due process, equal protection. From Roe v. Wade to Dobbs
Section 4	Fundamental rights in the digital ecosystem
Section 5	The international protection of human rights <ol style="list-style-type: none">The UN systemInternational criminal justiceThe regional systemsAsylum, refugees and migrants
Section 6	The European supranational scenario <ol style="list-style-type: none">The ECHR systemEU's protection of fundamental rights

Prior knowledge

Although the course is designed for undergraduate students, students must own a basic knowledge of constitutional and public international law. For this preliminary study, see A. Buratti, *Western Constitutionalism*, Springer-Giappichelli, 2nd ed., 2019.

Assessment

Assessment methodology depends on whether the student is an “attending student” or a “non-attending student”.

An “attending student” is a student who (i) is present at least to 80% of classes, **and** (ii) complies with assignments.

For Attending students:

Written final exam on topics and materials covered in classes (70%).

For Non-Attending students:

An oral final exam will be held, covering the whole program, on the following reading materials:

READING MATERIALS FOR ORAL EXAM OF NON-ATTENDING STUDENTS

A) Fundamental Rights in European Constitutions:

In order to study this section, student has to refresh his/her knowledge on post WW2 European constitutionalism. A useful tool is A. Buratti, *Western Constitutionalism*, Springer, with special attention to Chapter 6 and 7: (i) fundamental rights issues and (ii) constitutional review, both in national constitutions as well as in European Constitutional Space.

Compulsory Readings:

- C. McCrudden, Human Dignity and Judicial Interpretation of Human Rights, <http://ejil.org/pdfs/19/4/1658.pdf>
- Discussion on the case of ICC, on voluntary prostitution: https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/Sentenza_n_141_del_2019_eng_red_Modugno.pdf
- Discussion on the case of BVG, assisted suicide: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/02/rs20200226_2bvr234715en.html;jsessionid=8FB596950A43ECC953B1C83AED3A0123.1_cid507

B) International Criminal Justice:

In order to study this section, it is necessary to own a good knowledge on (i) origins, (ii) jurisdiction, and (iii) competences of the International Criminal Court of the Hague. Students can visit the ICC's website to obtain such information.

Compulsory readings:

- Tomushat, The Legacy of Nuremberg
- Jessberger – Geneuss, The Many Faces of the International Criminal Court

C) European Convention on Human Rights

In order to study this section, student finds introductory explanation on the ECHR in A. Buratti, *Western Constitutionalism*, Springer, Chapter 7.

Compulsory readings:

- Repetto (ed.), The Constitutional Relevance of the ECHR in Domestic and European Law. An Italian Perspective, Intersentia
- Discussion on the Lautsi II (Grand Chamber) case: find it at <https://hudoc.echr.coe.int/eng?i=001-104040>

Erasmus and international students

Erasmus and international students are welcome. They must contact the secretary of the Global Governance program in order to register to the course. Please take note of the prior knowledge required for the participation to the course.

Office hours

Prof. Buratti receives students on appointment: burattiandrea@hotmail.com in the School of Law (Building D, via Cracovia 50).

NOTE: If you are an **Erasmus or a non Global Governance student** who would like to attend one or more courses in the Global Governance programme, please be aware that, **before enrolling in the course**, you should have read the code of conduct and the procedural rules characterizing our programme. We assume that, if you enrol in the course, **you have read and accepted all Global Governance values and rules**. 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.

Description of the methods and criteria for testing learning

The examination assesses the student's overall preparation, ability to integrate the knowledge of the different parts of the program, consequentiality of reasoning, analytical ability and clarity of presentation, in accordance with the Dublin descriptors (1. knowledge and understanding; 2. applying knowledge and understanding; 3. making judgements; 4. learning skills; 5. communication skills).

The examination will be graded according to the following criteria:

Unsuitable: important deficiencies and/or inaccuracies in the knowledge and understanding of the topics; the topics are exposed in an incoherent manner and with inappropriate language.

18-20: barely sufficient knowledge and understanding of most of the topics, with some missing items; sufficient capacity for analysis; the topics are sometimes exposed in an inconsistent manner and with inappropriate/technical language;

21-23: basic knowledge and understanding of most of the topics; ability to analyze and synthesize correctly with sufficiently coherent logical argumentation, with possibly some inaccuracy in the technical language.

24-26: good knowledge and understanding of most of the topics; good analytical and synthetic skills with rigorously expressed arguments, though with possibly a few inaccuracies in the technical language.

27-29: complete knowledge and understanding of the topics; good capacity for analysis and synthesis. Arguments presented in a rigorous manner and with appropriate/technical language, with only minor inaccuracies.

30-30L: very good level of knowledge and thorough understanding of topics. Excellent analytical and synthetic skills and independent judgement. Arguments expressed in an original manner and in appropriate technical language.
