UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Constitutional Justice

1920-4-A5810082

Learning objectives

Constitutional Justice is the jurisdictional defence of the Constitution against acts, including law, and conducts carried out by Public Powers.

Various models of Constitutional Justice are nowadays present in almost every democratic legal systems. They aim at assuring the binding feature of the Constitution and the observance of the fundamental rights protected by the Constitution and of boundaries between the competences of central State and local governments.

The first part of the course concerns the historical and comparative study of different Constitutional experiences, including the existing link between constitutional justice and democracy.

The main subject of the course is the Italian Constitutional Justice system, which will be studied from the origin, through its historical and concrete evolution.

Particular relevance will be given to different aspects of the constitutional legitimacy ruling, such as the way of access to the Constitutional Court and its decisions' effects in the protection of fundamental rights. Therefore, the students will experience a sort of 'constitutional law in action'.

Contents

Origins of Constitutional Justice

European and American models of Constitutional Justice

Constitutional Justice and democracy

The Italian Constitutional Court, its history, features, composition, organisation and functioning

The Italian Constitutional Court between policy and jurisdiction;

Italian Constitutional Court and Parliament;

Italian Constitutional Court and judicial authorities:

The "incidental' system of constitutional review" "

The ECHR and the EU law before the Italian Constitutional Court. Particular relevance will be given to the different kind of final decisions and to their effects.

Detailed program

The judicial review of legislation and its different mechanism in common law and civil law legal systems

The judicial review of legislation in the Italian legal system: the debate during the Constituent Assembly

The Italian constitutional justice's sources of law

The Italian Constitutional Court and its composition

Organization and functioning of the Italian Constitutional Court

The reasoning in the Italian constitutional jurisprudence

The notions of "judge" and "trials"

The contested measure

The constitutional principles

The referring judge

The referral order and its requisites

Public Hearing and Hearing in Chamber

Decisions and Judgments

The petition for certiorari

Proceedings concerning a jurisdictional dispute between branches of State, between State and Regions and between Regions

The principle of reasonableness

Prerequisites

Good knowledge of the Italian Constitutional Law is required

Teaching methods

The course duration is on three-weekly lectures basis (2 hours each).

Because of its tutorial feature it is addressed to attending students.

Beside traditional lectures and meetings with relevant guests, students will be actively involved into jurisprudential case-study and discussion.

The course includes a visit to the Constitutional Court in Rome in order to attend a public hearing and to meet a Constitutional judge.

Assessment methods

Attending students will take their examination, writing a short article on a judgment recently adopted by the Italian Constitutional Court. The comment will be therefore discussed together with the Professor

Non-attending students will take an oral examination

Textbooks and Reading Materials

Attending students are due to know the relevant normative material, the case-law discussed in class and the following textbook: E. Lamarque, Corte costituzionale e giudici nell'Italia repubblicana, Bari, Laterza, 2nd edition, 2012.

Texts for non-attending students are: E. Lamarque, Corte costituzionale e giudici nell'Italia repubblicana, Bari, Laterza, 2nd edition, 2012. and E. Malfatti - S. Panizza - R. Romboli, Giustizia costituzionale, Giappichelli, last available edition