UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

SYLLABUS DEL CORSO

Diritto Costituzionale Europeo (i Diritti Fondamentali)

2425-4-A5810232

Learning objectives

The course aims to deepen the problem of the protection of fundamental rights according to a multilevel perspective. The different constitutional traditions and a common European cultural matrix are in continuous dialogue, sometimes clashing and more often harmonizing thanks to thethe constitutional and supranational courts's case law. Through the analysis of emblematic cases we will provide the tools to understand the protection of fundamental rights today.

Therefore, the course aims:
a) to acquire a solid methodological and critical apparatus for examining the evolutionary dynamics in the protection of fundamental rights in the European context;
b) to enhance the ability to correctly interpret judgments, contextualizing them within their respective legal frameworks, and to critically evaluate the impact of such decisions on the different national orders involved;
c) to consolidate an independent critical capacity in identifying and analyzing the different legal options applicable to issues related to fundamental rights, considering the complexity of the multilevel protection system;
d) to develop communicative skills through the elaboration of solid and persuasive legal arguments on fundamental rights, demonstrating the ability to effectively support both the prosecution and defense positions;
e) to understand and interpret relevant norms in a multilevel legal context; to identify the dynamics between different legal systems and their proper functioning; to critically evaluate the interrelations between international and supranational human rights charters and national constitutions.

Contents

The development of fundamental rights protection in Europe represents one of the hallmarks of the s.c. "European Constitution": in this sense, European constitutional law mainly serves the purpose of promoting the respect of human rights in the EU context, a necessary complement to the already well established principles of market economy. Besides, as it is well known, the institution of a European citizenship marked a watershed in the protection of fundamental rights in an integrated Europe.

Thus, fundamental rights transcend national borders and significantly develop in a supranational dimension. Today the European citizen enjoys many rights, protected by national constitutions, the European Union as well as many international instruments, among them the European Convention on Human Rights and the EU Charter of Fundamental Rights. Needless to say, though, fundamental rights in the words of a constitutional or a supranational court can mean very different things: it suffices to think of the different conceptions of the right to life, family life's rights, freedom of religion etc... The steady dialogue between supreme Courts on these capital issues has gradually developed a significant and unique system of multilevel protection of fundamental rights in Europe, in which the different national legal orders and a common European constitutional tradition converge.

The course will leave ample room for discussion of case studies, through which it will be possible to compare the different national constitutional identities and the emergence of a separate European constitutional tradition. In the first classes the general framework regarding the protection of fundamental rights in a integrated Europe will be explored as well as the ongoing process of integration through human rights.

Detailed program

1. The emergence of the protection of Fundamental Rights in the European Union through the case law of the European Court of Justice and the Charter of Fundamental Rights proclaimed in Nice. The EU system of protection of fundamental rights and national constitutions

2. The European Convention of Human Rights in dialogue with the EU Charter of Fundamental Rights and the national bill of rights.

3. Domestic constitutional tradition and common constitutional tradition in Europe. In adopting the case-law perspective, the principal topics covered will include the s. c. hard cases (for example, abortion, same-sex marriage, medically assisted procreation, EU citizenship, international measures against terrorism, the principle of democracy and the emergence of social rights in Europe).

Prerequisites

Considering that the course involves the analysis of supranational and international Courts' case law, it is required to read and comprehend a text in english.

The Course is given in Italian.

It may be useful, but not mandatory, to have already attended the courses of international law and EU law

Teaching methods

The course includes lectures; case-studies analysis; working groups; students' presentations; seminars with Italian and international guests.

1. Some of the first, more theoretical lessons will analyse the development of the protection of fundamental rights in the European Union, as well as the instruments of convergence between the fundamental rights protected by national constitutions and supranational courts, with particular reference to the Strasbourg

Court.
This part of the course includes:
4 face-to-face erogative lectures of two hours each
2 distance erogative lectures of two hours each

2. The second part of the course will be structured to allow ample time for the discussion of exemplary cases, through which it will be possible to compare different national constitutional identities and the emergence of an increasingly clear European constitutional tradition. Students will work individually or in groups on judgments of the Court of Luxembourg and the Court of Strasbourg, taking into account the dialogue that can take place with the highest national courts. The programme includes:
   15 interactive face-to-face lectures of two hours each.

Assessment methods

For students attending the course, the final exam will be in written form: it will consist of the writing of a case note, which will involve solving legal problems related to the course material. The knowledge acquired in class and from the study materials, as well as the student's critical thinking and problem solving skills, will be assessed through the description of a legal dispute, analysing the interconnections between various elements/variables using one or more legal tools and theoretical models.
The specific details will be explained in class and exercises will be carried out during the course.
It is also possible to take an oral exam to assess the student's understanding of the theoretical issues covered in class, the issues raised in the legal disputes and the critical thinking skills developed in relation to these issues.

For non-attending students, the exam will be oral and based on texts provided by the professor via e-mail. It will include open-ended questions on the assigned readings in order to assess not only the understanding of the theoretical issues in the course material and the problems raised in the proposed legal disputes, but also the critical thinking skills developed by the student in addressing these issues.

Textbooks and Reading Materials

Students attending the course are required to read the suggested cases in advance of the class, in order to be able to participate and contribute to the class discussion. All the materials will be online on the e-learning website.

For students not attending class the exam will focus on materials to be asked by mail (stefania.ninatti@unimib.it) and it will be based on essays published on law reviews and on relevant judgments of constitutional, supranational and internatonal courts.

Sustainable Development Goals

GENDER EQUALITY | REDUCED INEQUALITIES | PEACE, JUSTICE AND STRONG INSTITUTIONS