UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Constitutional Justice

2526-4-A5810082

Learning objectives

- Knowledge and understanding
  Constitutional justice can be defined as the judicial guarantee of the Constitution against acts and conduct of public authorities, including legislation.
  Today, almost all democratic legal systems adopt various forms of constitutional justice to ensure the rigidity of the Constitution and to protect both fundamental individual rights and the distribution of powers among state authorities and territorial entities.
  After a brief introduction dedicated to the historical analysis of the emergence of constitutional review systems, the course will focus on understanding the actual functioning of the Italian incidental system of judicial review of legislation.

- Applying knowledge and understanding
  During the course, the most significant aspects of incidental constitutional review will be explored through constant reference to the case law of the Constitutional Court. Particular attention will be given to the procedures for accessing the Italian Constitutional Court and to the effects of its decisions, according to their different types.
  The cases examined will be selected for their substantive interest.
  In this way, students will experience a sort of “constitutional law in action” and will understand how essential it is for any legal professional not to stop at the level of statutory legality, but always to consider the level of constitutional legality, either by interpreting laws in conformity with the Constitution or by activating the valuable—though still little known—mechanism of the incidental question of constitutionality.

- Making judgments
  The course aims to develop students’ critical thinking. They will be asked not only to understand and evaluate the logical reasoning behind the Constitutional Court’s decisions analyzed in class, but also to critique the reasoning itself, where appropriate proposing alternative solutions and supporting them with sound arguments.

- Communication skills

At the end of the course, students will be able to master the techniques of constitutional interpretation and to develop convincing arguments both orally and in writing.

- Learning skills
  One of the specific skills acquired during the course will be the ability to quickly read the Constitutional Court's decisions and identify their significant passages, so as to use them in addressing any issues that may arise in future professional practice.

Contents

Following a brief introduction that explores the historical development of systems of constitutional review, the course will concentrate exclusively on the Italian incidental system of constitutional adjudication.

Detailed program

The origins of constitutional justice. The American and European models.

The Italian Constitutional Court: its historical genesis, powers, composition, organization, and functioning.

The sources of Italian constitutional justice.

The Constitutional Court and ordinary judges in Republican Italy.

The incidental review of constitutionality: the prerequisites for initiating it, the stage before the referring judge (giudice a quo), and the constitutional proceedings.

In particular: the ECHR law and EU law before the Constitutional Court.

The reasoning of constitutional judgments.

Constitutional decisions and their effects.

Prerequisites

Good knowledge of the Italian Constitutional Law is required.

Teaching methods

The course consists of three weekly sessions, each lasting two hours.

It adopts a seminar-style format and is therefore particularly well-suited for students who attend regularly.

In addition to traditional lectures delivered by the instructor and presentations by distinguished guest speakers, the classes will require active student participation. Students will be expected to present and critically discuss significant judicial cases.

Assessment methods

Oral examination.

Textbooks and Reading Materials

Texts are: E. Lamarque, Corte costituzionale e giudici nell'Italia repubblicana. Nuova stagione, altri episodi, Editoriale Scientifica, Napoli, 2021 and E. Malfatti - S. Panizza - R. Romboli, Giustizia costituzionale, last ed., Giappichelli, Torino, limited to chapters I, II, III, VIII and IX.

Sustainable Development Goals

PEACE, JUSTICE AND STRONG INSTITUTIONS