UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Constitutional Justice

2627-4-A5810082

Learning objectives

Almost all contemporary democratic legal systems now provide for some form of constitutional adjudication, aimed at safeguarding the supremacy and rigidity of the Constitution and ensuring respect for fundamental rights, the separation of powers, and the allocation of competences between the State and territorial authorities.
The introductory part of the course will be devoted to a historical and comparative analysis of the main models of *judicial review*, as well as to an examination of the relationship between constitutional adjudication and the democratic-representative process.
The course will then focus primarily on the Italian system of constitutional justice, examining both its historical development and its practical operation. Particular attention will be paid to incidental constitutional review, with specific regard to access to the Constitutional Court, the role of the referring judge, the structure of constitutional proceedings, and the effects of the Court's decisions, including the various types of judgments developed in the Court's case law.
Through systematic reference to constitutional case law, the course aims to provide students with the analytical tools needed to understand how Italian constitutional justice operates and to critically assess the role of the Constitutional Court in the protection of fundamental rights and in the resolution of institutional conflicts.
The cases discussed will also be selected for their substantive relevance, enabling students to observe how fundamental rights are protected in practice within the Italian legal order and to engage with constitutional law as a living, operative discipline

Contents

The origins of constitutional adjudication.

The American and European models of *judicial review*.

Constitutional adjudication, constitutional rigidity, and representative democracy.

The Italian Constitutional Court: historical origins, jurisdiction, composition, organisation, and functioning.

The Italian Constitutional Court between politics and adjudication: its relationship with Parliament and with the judiciary.

Incidental constitutional review: the conditions for initiating proceedings, the phase before the referring court, and the proceedings before the Constitutional Court.

Principaliter procedings: subject matter, standing, time limits for bringing proceedings, grounds of appeal, and the role of the Constitutional Court in State–Region relations.

Conflicts of attribution before the Constitutional Court: conflicts between branches of government and conflicts between the State and the Regions, and among Regions.

European Union law and the European Convention on Human Rights before the Constitutional Court.

The decisions of the Constitutional Court: types of judgments, adjudicatory techniques, and legal 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, students will be actively involved into jurisprudential case-study and discussion.

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
Textbook for non-attending students is E. Malfatti - S. Panizza - R. Romboli, Giustizia costituzionale, Torino, Giappichelli, last available edition

Sustainable Development Goals

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