

The Role and Legitimacy of Constitutional Courts in Europe: A Comparative Perspective

Prof. Dr. Armin von Bogdandy, Dr. Davide Paris, Dr. Sabrina Ragone

This Kolloquium aims at providing students with a first-hand understanding of the methodology of comparative law, by discussing the role of constitutional courts in different European legal orders. The first part of the course will assess the main issues of comparative law methodology, providing a general overview on the methods, the goals and the problems of comparative law. The course will then apply this methodology to the study of constitutional courts in Europe, taking into account mainly the constitutional courts of four European States (France, Germany, Italy and Spain). Topics that are addressed include constitutional courts' composition, jurisdiction, proceedings and functions. Particular attention will be devoted to the problem of constitutional courts' legitimacy, focusing on the power of a non-democratically elected body, to nullify a law passed by a democratically elected body, namely the Parliament.

The course intends to help students to improve their skills in discussing legal issues and in writing and presenting their own essays. To this end classes include both traditional lectures and the presentation and discussion of texts and judgments assigned in advance. Each student is further required to write a short essay on one of the course's topics and discuss it in the last class. The lecturers will constantly supervise and support the students in choosing the topic and in the whole process of studying, collecting materials and writing the essay.

All classes are held in English. Students can write and discuss the paper either in English or in German.

Dates, topics and reading assignments

19.10.2016, h. 14.00-17.15

Introduction (Prof. Dr. Armin von Bogdandy)

26.10.2016, h. 14.00-17.15

The Methodological Framework of Comparative Law (Dr. Sabrina Ragone)

Michael Bogdan, *Concise introduction to comparative law*, Groningen, Europa Law Publ., 2013, Chapter 2 (*The uses of comparative law*, pp. 15-26) and Chapter 3 (*Some problems connected with the study of foreign law*, pp. 29-41)

16.11.2016, h. 14.00-17.15

Constitutional Justice: Systems and Models (Dr. Sabrina Ragone)

M. Rosenfeld, *European and US constitutionalism*, Cambridge University Press, 2005, Chapter 8 (*Constitutional Adjudication in Europe and the United States: paradoxes and contrasts*, pp. 197-238)

30.11.2016, h. 14.00-17.15

Constitutional Adjudication in Italy, France, Spain and Germany (Dr. Davide Paris)

A. Harding, P. Leyland, T. Groppi, *Constitutional Courts: Forms, Functions and Practice in Comparative Perspective*, in: A. Harding and P. Leyland (eds.), *Constitutional Courts: A Comparative Study*, Wildy, Simmonds & Hill Publishing 2010, pp. 1-27

7.12.2016, h. 14.00-17.15

Constitutional Courts and the Principle of Proportionality (Dr. Davide Paris)

Bundesverfassungsgericht, Judgment of the First Senate of 15 February 2006, 1 BvR 357/05
[Human Dignity and the Fight against Terrorism]

14.12.2016, h. 14.00-17.15

Constitutional Courts' Legitimacy, in Europe and in the USA (Dr. Davide Paris)

U.S. Supreme Court, Obergefell v. Hodges, 576 U.S. (2015) [Same-sex Marriage]

25.01.2017, h. 14.00-18.00

Presentation and discussion of the students' papers at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg (Prof. Dr. Armin von Bogdandy, Dr. Davide Paris, Dr. Sabrina Ragone)