

## COURSE OF STUDY Law - Legal Sciences of Immigration, Human Rights and Interculturality

ACADEMIC YEAR 2024/2025

ACADEMIC SUBJECT Comparative Constitutional Justice (Giustizia costituzionale Comparata)

General information	
Year of the course	<ul style="list-style-type: none"> <li>- <b>4th year</b>, as a complementary discipline, for the Master's Degree program in Law</li> <li>- <b>From the 1st year</b> of the program, as a discipline chosen by the student, for the Bachelor's Degree program in Legal Sciences for Immigration, Human Rights and Interculturality</li> </ul>
Academic calendar (starting and ending date)	I semester (11th of September 2024 – 4th of December 2024)
Credits (CFU/ETCS):	6 ECTS
SSD	Comparative Public Law – GIUR-11/B
Language	Italian
Mode of attendance	Voluntary, although recommended

Professor/ Lecturer	
Name and Surname	Giuseppe Naglieri
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Department and address	Jonic Department – Law seat – Via Duomo 259, 70123 Taranto
Virtual room	Microsoft Teams – code <b>s1z84wz</b>
Office Hours (and modalities: e.g., by appointment, on line, etc.)	<p><b>In the first semester, after classes:</b> Tuesdays and Wednesdays from 12 to 14.</p> <p><b>In the second semester:</b> Tuesdays from 10 to 12.</p> <p>It is however recommended to pre-arrange the meeting by contacting the professor at: <a href="mailto:giuseppe.naglieri@uniba.it">giuseppe.naglieri@uniba.it</a></p>

Work schedule			
Hours			
Total	Lectures	Hands-on (laboratory, workshops, working groups, seminars, field trips)	Out-of-class study hours/ Self-study hours
150	48		102
CFU/ETCS			
6			

Learning Objectives
<p>The comparative constitutional justice class aims to provide the student with a basic understanding of constitutional justice's origins, development, and latest developments in modern democratic systems. Starting from the analysis of the classical models of political and judicial review developed by the legal-comparative doctrine (judicial review or diffused model, Kelsenian or centralized model, third genus or incidental model, and fourth genus or hybrid model) and following a traditional structural and functional analysis (structural aspects of constitutional jurisdictions, selection of judges, forms of access, powers conferred, types of decisions and effects), the student will be offered, through a diachronic perspective, a problematic picture of the doctrinal models</p>

	<p>of constitutional justice. Tracing the most recent doctrinal findings on the classification of the models of constitutional justice and adopting an approach aimed at combining the law in the books and the law in action, we will reach, through the analysis of the most relevant changes that constitutional jurisdictions have experienced in recent years, a deconstruction of the classical theory, based on the access, or the political or jurisdictional nature of review in favor of a plural - and inevitably fuzzy method-inspired - classification of constitutional justice, which considers, on the one hand, the progressive movement toward judicial review in countries historically anchored in political control, and on the other hand the inherent politicalness of the activity of the constitutional judge, which indeed is intrinsic, as Kelsen himself pointed out, in all forms of judicial review.</p> <p>In this regard, particular emphasis will be given to such an authentic crucial point of constitutional justice, which increasingly emerges as a central issue in doctrinal reflections: examining the recent trends of modern constitutional jurisdictions in their relationship with the political circuit, we will discuss, right applying the plural modeling, and beyond the verbalized formants, the reasons, effects, and limits to judicial activism and, inevitably, the judicialization of politics.</p> <p>Such an approach allows for a rereading of the essential theoretical elements provided at the opening of the class as they emerge in the concrete reality of modern constitutional justice.</p>
<b>Course prerequisites</b>	<p>It is a precondition of the course to be familiar with the basics of constitutional law, with particular reference to the evolution of the forms of state and the rise of the constitutional rule of law, to the constitutional rigidity and its historical reasons, to the functioning of the hierarchy of legal sources and the Italian constitutional justice. The constitutional law exam represents a prerequisite.</p>
<b>Teaching strategies</b>	<p>The course will be taught, for the first part of the class, whose purpose is acquiring historical-theoretical and theoretical-modeling knowledge, mainly through face-to-face lectures.</p> <p>However, when deconstructing classical models and analyzing the most recent trends in the constitutional jurisdictions on the European continent, North America, and Latin America, examining the hybridization, the decline of the typicality of the ruling, and the rise of polymorphism of constitutionality decisions, the preliminary and executive powers of the constitutional courts, as well as in general the aspiration for the control of time and on the effects of the decisions, the teaching methods will have to tend to the laboratory model, through the sequential analysis of selected decisions, to bring out the trends, replicable and the contingent phenomena, which only the systematic study of constitutional case law can unveil. Such work may require the more active involvement of students through in-class presentations, in group work format, of previously assigned cases that can be placed within the context of the evolutionary phenomena previously outlined through frontal lectures and a comparative dialogue on the convergences and divergences that can be detected. Single-topic seminars are also planned.</p>
<b>Expected learning outcomes in terms of</b>	
<b>Knowledge and understanding on:</b>	<p>The student will learn to classify, in the modern legal-constitutional reality, the systems of constitutional justice, with a critical eye to the traditional models. He or she will learn to apply the comparative method to the analysis of the forms by which constitutional justice is delivered in modern democracies, as well as to value the case-law and procedural factor in shaping the role, powers and models</p>

	of constitutional justice, in the context of the changing relationships between constitutional courts and political powers.
<b>Applying knowledge and understanding on:</b>	The student is fully capable of contextualizing decisions, case-law trends, and cases brought to the attention of constitutional jurisdictions within the framework of the characteristics peculiar to the models learned, as well as giving due consideration to the established case-law trends, the peculiar lines of tendency of the specific constitutional jurisdiction and its relations with political powers. The student is able to analyze constitutional rulings of different constitutional jurisdictions and detect the form of access, the type of decision, and the procedural and systemic effects, as well as to detect any innovations on the procedural level or in the interpretation of substantive law, the connections as well as the references to the precedents of other constitutional jurisdictions, in order to unveil touchpoints and moments of cross-fertilization in the dialogue between courts.
<b>Soft skills</b>	<p><b>Making informed judgments and choices</b> Through the integrated approach of face-to-face lectures and laboratory teaching in a group format, intended to analyze judgments and leading cases of constitutional justice, the student will acquire the method, categories, and critical skills necessary to analyze later decisions and trends of the constitutional judge also in the context of complex political-institutional phenomena and relations different from the system of origin. As for the autonomy of judgment in detail, the student will be able to understand the possible occurrence of jurisprudential innovations in Italian and foreign constitutional justice, understand their reasons, also considering the changes in the political framework to detect the possible change or innovation of the procedural models, together with its causes and effects in terms of access to constitutional justice, the effectiveness of the decisions and impact on the political system.</p> <p><b>Communicating knowledge and understanding</b> The student will be able to contextualize the knowledge acquired in constitutional justice with technical vocabulary and due reference to jurisprudential categories and refer to relevant decisions and jurisprudential orientations of the constitutional jurisdictions. This will not only enable them to communicate and transfer the knowledge gained to a specialized audience or interlocutor but also to transmit the knowledge, the problematic issues, and the crucial elements of modern constitutional justice in interaction with an audience of non-specialists in the context of discussions on the trends in political systems and modern representative democracies.</p> <p><b>Capacities to continue learning</b> The course aims to provide the student with the tools and categories of comparative law as applied to constitutional justice so that by the end of the course, the student will have developed the ability to use the categories and methods to additional and ongoing questions of constitutional justice that may present to them in further study or professional activity. In detail, they will be able to analyze additional and more recent decisions issued by the Italian Constitutional Court or other constitutional jurisdictions, to place them in the context of the most recent trends in the relations between constitutional justice, politics, and social bodies, to understand new case law orientations, to detect their impact on the procedural and substantive level, and to detect changes in the context of the system of sources or shifts and deviations from the legislative formant.</p>
<b>Syllabus</b>	
<b>Content knowledge</b>	<b>Constitutional justice between models and classifications</b>

	<ol style="list-style-type: none"> <li>1. Strengths and limits of the classical models of constitutional justice</li> <li>2. The critique of classical models and the fuzzy classifications</li> <li>3. Decline and resurrection of political review: judicial</li> </ol> <p><b>Judicial review</b></p> <ol style="list-style-type: none"> <li>1. The U.S. archetype: the myth and its influence</li> <li>2. The emergence of the Kelsenian model</li> <li>3. Binary systems: the difficult coexistence of diffused and centralized control</li> </ol> <p><b>The structure: composition of the Courts</b></p> <p><b>Access to the Courts and expansion of the protected good</b></p> <ol style="list-style-type: none"> <li>1. The constitutional review of legislation</li> <li>2. Jurisdiction over disputes</li> <li>3. The constitutional jurisdiction of freedoms</li> <li>4. The other functions</li> </ol> <p><b>The decisions of the courts: types, effects, enforcement</b></p> <ol style="list-style-type: none"> <li>1. The decline of the typicality of the ruling and the polymorphism of constitutional decisions</li> <li>2. The Binding effect of decisions and the instruments for securing it: the preliminary and executive powers of constitutional courts</li> <li>3. The domain of time</li> </ol> <p><b>Political and jurisdictional in constitutional justice today</b></p>
<b>Texts and readings</b>	L. Pegoraro, <i>Sistemi di giustizia costituzionale</i> , Giappichelli, Torino, 2019 (288 pp.)
<b>Notes, additional materials</b>	During the course will be consulted various chapters of: A. Von Bogdandy, P.M. Huber, C. Grabenwarter, <i>Constitutional Adjudication: Institutions</i> , Oxford, Oxford, 2020. Will also be consulted selected parts of: H. Kelsen, <i>La Giustizia costituzionale</i> , Giuffrè, Milano, 1981.
<b>Repository</b>	The course material will remain available at all times and in permanent form on dedicated folders in the teacher's Teams channel, which can be reached via the code: <b>s1z84wz</b>

<b>Assessment</b>	
Assessment methods	<p>Knowledge will be assessed and evaluated by oral interview, with the final grade expressed in thirtieths.</p> <p>The interview aims to assess the learning of the categories of constitutional justice, its historical evolution and the comparative method applied to the analysis of constitutional justice.</p> <p>The interview, conducted in a dialogical spirit, is aimed at assaying, in addition to the technical and modeling notions necessary for a comparative reflection on constitutional justice, the student's reasoning starting from the traditional categories, with the purpose of tracing recent trends on the internal and external dimensions of the constitutional process, with special regard to the position of the constitutional judge and the relationship with the powers of the state.</p>

	The interview consists of two questions, from which the student is invited to make comparisons with other experiences and to carry out evolutionary and systemic reflections on constitutional justice.
Assessment criteria	<p><b>Knowledge and understanding</b> The student shall be able to present discursively and systematically the theoretical knowledge acquired</p> <p><b>Applying knowledge and understanding</b> The student shall be able to examine the constitutional jurisprudence presented to him or her with a systematic approach and by critically applying the categories learned</p> <p><b>Autonomy of judgment</b> The student shall show ability to independently identify and contextualize connections among procedural, substantive, and systemic issues, as well as to foreshadow and contextualize trends in a specific constitutional justice experience and their impact on overall constitutional arrangements</p> <p><b>Communicating knowledge and understanding</b> The student shall show the ability to present the acquired knowledge clearly, systematically, persuasively, and with the necessary linguistic-technical equipment, as well as to illustrate with rigor and critical method the evolving trends in the experiences of constitutional justice under study, and also demonstrate to have acquired the vocabulary proper to the comparative method, and to apply it during the oral interview.</p> <p><b>Capacities to continue learning</b> The student shall show that he/she has acquired a level of knowledge of the topics covered by the teaching suitable for organizing independently and discursively, including through thematic connections and/or by disjunction the knowledge acquired, with a critical spirit and command of the specialized vocabulary.</p>
Final exam and grading criteria	The exam will be conducted with the aim of testing the student's ability to illustrate constitutional issues and phenomena and to analyze them critically. The final assessment will be formulated in a numerical grade or a passing grade depending on each student's study plan. The final grade shall be given in thirtieths. The exam is considered passed when the grade is greater than or equal to 18. To achieve a high grade, the student must have developed independent judgment and adequate argumentation and exposition skills. Honors are awarded if the student demonstrates strong argumentative and critical ability and is able to grasp systemic and evolutionary considerations concerning the position of constitutional justice within the modern democratic state, referring to the correct paradigmatic experiences of the respective trends and relevant technical elements.
Further information	<p>Dissertations are assigned after an interview aimed at agreeing with the student on a research topic. Applications must be made no less than six months before the discussion. Knowledge of at least one foreign language is required.</p> <p>The discipline is a recognizable learning activity to be included in the Learning Agreement of outgoing students admitted to spend a period of study abroad as part of their participation in the Erasmus+ Student Mobility Program.</p> <p>For incoming students admitted to spend a period of study on-campus as part of participation in the Erasmus+ Student Mobility Program, supplementary material in English, Spanish or French will be made available, if necessary.</p>
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