



UNIVERZITA KOMENSKÉHO V BRATISLAVE
PRÁVNICKÁ FAKULTA

Department of Constitutional Law

Šafárikovo nám. 6, P. O. BOX 313, 810 00 Bratislava I



COMPARATIVE CONSTITUTIONAL LAW
(Winter 2017/2018)

Lecturer: JUDr. Kamil Baraník, PhD., LL.M.

Email: kamil.baranik@flaw.uniba.sk

Office hours: Mondays 13.40 – 15.10 or by appointment

Classes: Mondays 15.15 – 16.40, room 618 NB (new building)

Required reading assigned according to this syllabus.

Readings: ccl2017bratislava@gmail.com

Password: contact lecturer

Literature (optional)

JACKSON, V. C., TUSHNET, M. – Comparative Constitutional law, 2nd edition, Foundation Press: 2006.

ROSENFELD, M., SAJÓ, A. – The Oxford Handbook of Comparative Constitutional Law, OUP Oxford: 2012.

HERINGA, A., W., KIIVER, P. – Constitutions Compared: An Introduction to Comparative Constitutional Law (Third Edition), Intersentia: 2012.

GINSBURG, T., DIXON, R. – Comparative Constitutional Law (Research Handbooks in Comparative Law Series), Edward Elgar Pub: 2013.

General comment:

This course will be aimed at some intriguing problems that are now significant in the field of comparative constitutional law. The classes will be discussion orientated. The students are expected to possess at least a general knowledge of constitutional law of their native countries, so they will be able to grasp and to discuss various constitutional issues using comparative approach.

Requirements:

Phone:
+421 259244-344

E-mail:
kamil.baranik@flaw.uniba.sk

Internet:
<http://www.flaw.uniba.sk>



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1. Participation in Discussion: This seminar thrives on discussion. Everyone is expected to do all assigned readings and to participate actively in every session. It does not necessarily follow that students must agree with arguments presented in the readings. The dissenting arguments are expected and warmly welcomed.

2. Research Paper: Research [at least] three sources that were not assigned, and write a 2,500-word essay reflecting on one, or two topics considering the assigned readings, our discussions in classes, and your three additional sources. The paper cannot be written on the same subject as the assigned presentation. The topics of the paper must be firstly discussed with lecturer (prior the end of October).

3. Presentations: The students are required to sign up for a topic that will be discussed during the semester and to prepare a short presentation (approximately 20 mins, the PowerPoint slides are very much appreciated). The presentation of the topic should serve as a springboard to the following discussion during class. In order to allow all students to actively participate in discussions after presentations, each student prepare a written handout beforehand and send it to students' email account *at least two days before seminar*. Written handout should follow a structure of a presentation and be preferably accompanied by references of various sources (articles, books, judgments etc.).

Attendance: Attendance of seminars is according to the Faculty of Law Regulation (Art. 13, para 12) compulsory. Non-preparation for seminar (not reading a written handout or given article, not sending presentation on time, “no opinion” etc.) will be considered as an absence. Any absence must be remedied on an individual basis (short/long paper, assignment etc.).

Evaluations and deadlines: The final grade will be based on participation in class discussion (25%), presentation (25%), and research paper (50%). Papers are due on December 30, 2017.

OUTLINE OF TOPICS:

1. Introduction (25.09.)

- basic logistics (methodology, system of evaluation, assigning the topics for presentations)



2. Comparative Constitutional Law (02.10.)

- beginnings, status quo and challenges

Reading: Perju, V.: Constitutional Transplants, Borrowing and Migrations. In ROSENFELD, M., SAJÓ, A. (eds.): *Comparative Constitutional Law*. OUP, 2012, p. 1301-1327.

3. Why Judges Use Foreign Law? (09.10.)

Readings:

- Dorsen, N.: A Conversation between U.S. Supreme Court Justices. In: *International Journal of Constitutional Law*, 4, 2005, p. 521-531 (edited version).
- Graziano, T., K.: Is it Legitimate and Beneficial for Judges to Compare? In: Andenas, M., Fairgrieve, D.: *Courts and Comparative Law*, OUP, 2015, p. 25-53.

4. Constitutional Lawmaking (16.10.)

Reading: Partlett, W.: The Dangers of Popular Constitution-Making. *Brooklyn Journal of International Law*, Vol. 38, 2012, p. 193-238.

5. Elections (23.10.)

Reading: Ackerman, B, Fishkin, S., J.: The Deliberation Day. In: *The Journal of Political Philosophy*, vol. 10, number 2, 2002, p. 129-152.

6. Presidential v. Parliamentary Systems (06.11.)

Reading: Richard, A.: Presidential Values in Parliamentary Democracies, In: *International Journal of Constitutional Law*, vol. 8, no. 2 p. 207-228. (shortened version)

7. States of Emergency (13.11.)

Reading:

- Bingham, T.: Terrorism and Rule of Law, In: BINGHAM, T.: *The Rule of Law*, Penguin, 2011. p. 133-159.
- Joint Resolution of Congress. To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.



8. Judicial Review and its Forms (20.11.)

Reading: Ran Hirschl: Judicialization of Mega-Politics and the Rise of Political Courts, Annual Review of Political Science, vol. 11, 2008, p. 93-118.

9. Amendments to Constitutions and Constitutional Courts (27.11.)

Reading: Barak, A.: Unconstitutional Constitutional Amendments. In: Israel Law Review, vol. 44, 2011, p. 321-341.

10. Judicial Interactions (04.12.)

Reading: Slaughter, A., M.: Judicial Globalization. In: Virginia Journal of International Law, vol. 40, 1999-2000, p. 1103-1124.

11. International Spill-over of Constitutional Law (11.12.)

Readings:

- i. Case of Lautsi and others v. Italy, Grand Chamber (Application no. 30814/06) – (edited version)
- ii. Case of Sejdić and Finci v. Bosnia and Herzegovina – (Applications nos. 27996/06 and 34836/06) – (edited version)

12. Short presentations of students' ongoing research, final discussions (18.12.)