

FUNDAMENTAL RIGHTS

Degree in Taxation

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Code: 11101

Main Scientific Area: Public Legal Sciences

Lecturer: Gonalo Nicolau Cerqueira Sopas de Melo Bandeira

Language of Instruction: Portuguese

Regime: S1

Contact Hours: 60h Total Workload: 108h

ECTS: 6,0

Objectives

To understand the history of the Portuguese constitutional regime, the current political-constitutional organization, the importance and regime of fundamental rights, and the constitutional review mechanisms.

Learning Outcomes

- understand the history of the Portuguese constitutional regime;
- know the current political-constitutional organization;
- recognize the importance of fundamental rights and master their regime;
- understand and master the mechanisms for monitoring constitutionality.

Course Contents

1. Constitution Theory

1.1. The Constitution as a legal

1.1.1. Sense of the Constitution

1.1.2. Formation of the Constitution

1.1.3. Modifications and subsistence of the Constitution

1.2. The Portuguese Constitutions

1.3. Constitutional rules

1.3.1. Structure of constitutional norms

1.3.2. Interpretation, integration and application

2. Constitutional activity of the State and Constitutional Principles

2.1. Functions, organs and acts in general

2.2. Legislative acts

3. Fundamental Rights and Duties

3.1 Fundamental Rights

3.1.1. The issue of fundamental rights

3.1.2. Fundamental Rights Scheme

3.1.2.1. Common system of fundamental rights

3.1.2.2. Specific system of rights, freedoms and guarantees

3.1.2.3. Specific regime of Economic, Social and Cultural Rights

3.2. Key issues

4. Unconstitutionality and guarantee of the Constitution

4.1. Unconstitutionality and guarantee in general

4.2. Current regime of supervision in Portuguese Law

4.2.1. General aspects

4.2.2. Concrete supervision

4.2.3. The abstract review of unconstitutionality by action

4.2.4. Supervision of unconstitutionality by omission

Recommended Bibliography

ANDRADE, João Carlos de Vieira de, Os Direitos Fundamentais na Constituição Portuguesa de 1976, 6ª Edição, Editora Almedina, Coimbra, Reimpressão, 2023;

ANDRADE, Manuel da Costa, A "dignidade penal" e a carência de tutela penal como referência de uma doutrina teleológica-racional do crime, RPCC, ano 2, fascículo 2, 1992;

-Sobre as Proibições de Prova em Processo Penal, 1ª Edição, Editora Almedina, Coimbra, 1992 (reimpressão, Coimbra Editora, 2013);

BANDEIRA, Gonçalo S. de Melo, Responsabilidade Financeira e Criminal § Direitos Constitucionais Sociais, Dinheiros Públicos e Recuperação de Activos, Prefácio de Jónatas Machado, Editora Juruá, Lisboa, 2015;

- «O Direito Penal entre “Creutzfeldt-Jakob e Günther Jakobs”! Ou o Direito Penal (Económico) como Tutela de Bens Jurídicos e a Responsabilidade dos Entes Colectivos no Seio do Direito Penal (da Sociedade) do Risco e do “Direito” Penal do Inimigo», «Estudos Jurídicos Criminais», in AA.VV., Coordenador Luciano Nascimento Silva, Curitiba, Brasil, Juruá Editora, 2008, pp. 67-121;

-in «Poderá ser a Criminalização do Assédio Moral e/ou mobbing, rectius no trabalho, respeitadora dos princípios constitucionais da necessidade, adequação, proporcionalidade e intervenção mínima penais? - A Lesão dos Direitos Fundamentais Constitucionais dos trabalhadores: o caso português», in Revista «Estudios Penales y Criminológicos», FERNANDO VÁZQUEZ-PORTOMEÑE SEIJAS, Instituto de Criminologia, Faculdade de Direito da Universidade de Santiago de Compostela, pp. 391-430, 2011;

CANOTILHO, J.J. Gomes, Direito Constitucional e Teoria da Constituição, 7ª edição de 2003, Editora Almedina, Coimbra, 2015;

- Estudos Sobre Direitos Fundamentais, Coimbra Editora, Coimbra, 2ª Edição, 2008;

- «Brançosos» e Inconstitucionalidade. Itinerários dos Discursos sobre a Historicidade Constitucional, Editora Almedina, Coimbra, Reimpressão da Edição da 2ª Edição, 2012;

DIAS, Jorge de Figueiredo, Direito Processual Penal, Coimbra Editora, Coimbra, 1.ª ed. 1974 e reimp. («Clássicos Jurídicos»), em 2004;

- Direito Penal § Parte Geral § Tomo I § Questões Fundamentais § A Doutrina Geral do Crime, 3ª Edição actualizada e ampliada, Gestlegal, Coimbra, 2019;

MACHADO, Jónatas E. M., Liberdade de Expressão-Dimensões Constitucionais da Esfera Pública no Sistema Social, Studia Iuridica 65, Coimbra Editora, Coimbra, 2002;

PORTELA, Irene Maria, in «O Combate ao Branqueamento e Capitais e o Financiamento do Terrorismo à Luz do “USA PATRIOT Act 2001”», in AA.VV., Lisboa, 2010, pp. 255-290;

QUEIROZ, Cristina, Direito Constitucional – As Instituições do Estado Democrático e Constitucional, Coimbra Editora, Coimbra, 2009;

Learning and Teaching Methods

1. Constitution Theory

1.1. The Constitution as a legal phenomenon

1.1.1. Sense of the Constitution

1.1.2. Formation of the Constitution

1.1.3. Modifications and subsistence of the Constitution

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- 1.3. Constitutional rules
 - 1.3.1. Structure of constitutional norms
 - 1.3.2. Interpretation, integration, and application
- 2. Constitutional activity of the State and Constitutional Principles
 - 2.1. Functions, organs, and acts in general
 - 2.2. Legislative acts
- 3. Fundamental Rights and Duties
 - 3.1 Fundamental Rights
 - 3.1.1. The issue of fundamental rights
 - 3.1.2. Fundamental Rights Scheme
 - 3.1.2.1. Common system of fundamental rights
 - 3.1.2.2. Specific system of rights, freedoms, and guarantees
 - 3.1.2.3. Specific regime of Economic, Social and Cultural Rights
 - 3.2.Key issues
- 4. Unconstitutionality and guarantee of the Constitution
 - 4.1. Unconstitutionality and guarantee in general
 - 4.2. Current regime of supervision in Portuguese Law
 - 4.2.1. General aspects
 - 4.2.2. Concrete supervision
 - 4.2.3. The abstract review of unconstitutionality by action
 - 4.2.4. Supervision of unconstitutionality by omission

To understand the history of the Portuguese constitutional regime, the current political-constitutional organization, the importance and regime of fundamental rights, and the constitutional review mechanisms.

The proposed methodology meets the goals of teaching/learning defined for the curricular unit as it reflects the specific needs of the transmission of knowledge concerning the fundamental rights.

Assessment Methods

Continuous and periodic assessment:

Continuous and periodic assessment is made up of the following assessment elements:

Test (70% of the final classification or 14 points);

Individual written work (25% or 5 points);

Attendance (5% or 1 value).

The test will have a theoretical and a practical component, with a weight in the final classification of 35% for each component. The minimum score for the test is 5 points, under penalty of exclusion from continuous assessment.

The maximum grade in the attendance component presupposes the student's presence in at least 2/3 of the classes. Below this threshold, the component grade is proportional to the number of classes attended.

Students who obtain a grade equal to or greater than 8 and less than 10 in all three elements of continuous assessment will be admitted to an oral test. In this case, the final continuous assessment classification will be the oral exam grade. The oral exam will cover all the material taught.

The test date will be announced by the Course Director.

Exam times:

During exam periods (first semester exam period, special period and exceptional period), assessment is done through a written exam, from 0 to 20 points.

Students who obtain a grade equal to or greater than 8 and less than 10 in the written exam will be admitted to an oral test. In this case, the final classification will be the grade from the oral exam. The oral exam will cover all the material taught.