

STATE THEORY AND CONSTITUTIONAL LAW

Degree in Public Management

Code: 16700

Main Scientific Area: Public Legal Sciences

Lecturer: Irene Maria Portela

Language of Instruction: Portuguese

Regime: S1

Contact Hours: 45h Total Workload: 95h

ECTS: 5,0

Objectives

The course aims to provide first-year students with a basic but comprehensive knowledge of the Theory of the State and Portuguese Constitutional Law, enabling them to acquire the minimum core of skills necessary to understand the main concepts and principles that guide the organization and functioning of the Portuguese State, the fundamental rights enshrined in the Constitution of the Portuguese Republic and its respective regime, legislative activity and the constitutionality monitoring regime, developing research skills and a critical sense, and being able to solve practical cases on these subjects.

Learning Outcomes

- Knowing the origin and historical evolution of the State as a political, normative and social reality, as well as the applicable Constitutional Law; - Knowing fundamental rights and applying the respective legal regime; - Knowing the judicial protection of fundamental rights; - Knowing the functions of the State and its organizational structure; - Knowing the legislative process; - Knowing the mechanisms for monitoring constitutionality; - Solving practical cases on the subjects taught in the course.

Course Contents

Introduction

Notions of Political Science to understand the STATE.

PART I - THEORY OF THE STATE

I- Historical evolution of the State

1. Pre-state political societies
2. Processes of state formation
3. General characteristics of the state

II - The state as a political community

1. the state as a legal person
2. Elements of the State

3. People and citizenship

III - Political Power

1. Political power and sovereignty
2. The State's right over its territory
3. Territorial decentralization in the Constitution Chapter

III - Organs of State

1. Organs and related concepts
2. Duties and competence
3. Body members
4. Classification of bodies
5. Functioning of collegiate bodies

IV - Forms and systems of government

1. simple states and composite states
2. Political autonomy
3. Portugal: regional unitary state
4. Modern forms of government
5. Pluralist and representative democracy
6. The semi-presidential system of government in the 1976 Constitution Chapter

V - Legislative acts in Portuguese law

PART 2 - FUNDAMENTAL RIGHTS

I - The meaning of fundamental rights

1. Fundamental rights and human rights
2. Historical evolution of fundamental rights

II - Categories of fundamental rights

1. Fundamental rights and related figures
2. Classifications of fundamental rights

3. Rights to act and rights to demand
4. Rights of existence, freedom, participation, defense and rights to benefits
5. Rights of freedom and social rights

PART 3 - MONITORING CONSTITUTIONALITY

I. Unconstitutionality, guarantee and review

1. Basic concepts: unconstitutionality, guarantee and review
2. The major models for monitoring Constitutionality Chapter

II - Monitoring constitutionality in Portuguese law

1. Scope of review
2. Assessment of constitutionality by the courts in general
3. Decisions appealable to the Constitutional Court
5. Abstract review and concrete review
6. Preventive review and successive review
7. Effects of a declaration of unconstitutionality

Recommended Bibliography

José Joaquim Gomes Canotilho, *Direito Constitucional e Teoria da Constituição*, reimpressão 7ª Edição, Reimpressão, Almedina, Coimbra, 2020; Jorge Reis Novais, *Princípios estruturantes do Estado de Direito*, Almedina , Coimbra 2022 Jorge Reis Novais, *Limites dos Direitos Fundamentais*, Almedina , Coimbra 2021 Jorge Reis Novais, *Limites dos Direitos Fundamentais - Fundamento, Justificação e Controlo*, 2ª Edição. Almedina Coimbra 2023 Jorge Miranda, *Curso de Direito Constitucional*, Lisboa, Universidade Católica Editora, 2018, 2 volumes; Manuel Afonso Vaz e outros, *Direito Constitucional - O Sistema Constitucional Português*, Lisboa, Universidade Católica Editora, 2023, 3ª edição.

LEGISLAÇÃO AVULSA APLICAVEL A ESTA MATÉRIA: Constituição da República Portuguesa, aprovada pelo Decreto de Aprovação da Constituição publicado no Diário da República nº 86, I série, de 10 de abril de 1976, com as alterações introduzidas pela Lei Constitucional nº 1/2005, de 12 de agosto, que aprovou a sétima revisão constitucional Declaração Universal dos Direitos do Homem, Aviso, Diário da República nº 87, Série I, de 9 de março de 1978; Lei do Tribunal Constitucional, Lei nº 28/82, de 15 de novembro; Iniciativa Legislativa de Cidadãos, Lei nº 17/2003, de 4 de junho; Direito de Participação Procedimental e Ação Popular, Lei nº 83/95, de 31 de agosto; Estatuto Político-Administrativo da Região Autónoma dos Açores, Lei nº 39/80, de 5 de agosto; Estatuto Político-Administrativo da Região Autónoma da Madeira, Lei nº 13/91, de 5 de junho; Lei da Paridade, Lei Orgânica nº 3/2006, de 21 de agosto.

Learning and Teaching Methods

The syllabus has been defined based on the objectives to be achieved for this course, as well as the skills to be acquired by the students. In this sense, students will be given a broad overview of the Theory of the State and Portuguese Constitutional Law, along with the applicable legislation and case law on the theoretical subject taught,

working on practical cases and carrying out group work and discussion sessions, thus cultivating research skills and critical thinking, along with consolidating the compulsory content contained in the syllabus.

Assessment Methods

A continuous assessment model is adopted. Classes will be taught in a face-to-face environment and in e-learning (in the case of the Post-Labor Solicitors Course) using the Zoom/Colibri Platform. The access link to the ZOOM sessions is always the same - i.e. it is a link for recurring sessions. To access the sessions, students must log in with their IPCA credentials and present their personal identification in the Zoom window. Students must participate in classes with audio and video connected for the entire duration of the session, so that interaction between the teacher and the class is possible, as close as possible to the dynamics of face-to-face classes. Any exemption from the audio and/or video connection will be decided by the teacher, and any impediment or inability to connect the sound and/or image must be reported to her and justified by sending an email (iportela@ipca.pt). If the video cam is turned off without justification, they will be excluded from the classroom. No cell phones may be used during lessons. Nor during the test. Abuse of a cell phone will result in the test being cancelled. Unauthorized use of a cell phone in the classroom will result in the student being asked to leave the classroom for being disruptive. The learning demonstrated by each student will be graded at the end of the course on a scale of 0 to 20. The following components and weights are established for the final grade: a)- 20% for all attendance and participation in scientific activities (including study visits) considered relevant by the teacher for learning and the correct use of the course unit. Assessment will be carried out by means of two tests, each weighted at 50%, to be held on a date to be announced once approved by the course directorate. A mark of 7 (or higher) in the first test will allow you to take the second test. If not (a mark of less than 7), the student has not reached the minimum level of knowledge required in the subject being tested. The student must then sit the appeal period and sit the final exam. The date of the tests, previously communicated to the students, cannot be changed at the student's request. Students who miss an assessment must justify their absence in advance (if possible) to the course director in accordance with the Academic Regulations. The final grade will be the arithmetic average, based on the following formula: $CF = a50\% + b50\%$ Where: CF = Final Grade and a - first test and b - second test. The minimum pass mark for the course is 10 points, and the final mark for each assessment (test) cannot be less than 7.00 points (on a scale of 0 to 20). In the event of failure (obtaining less than 7 points in the arithmetic average of the two tests), the student must take an exam during the appeal period, which will cover the entire syllabus of the course. Even though in each of the tests, the teacher only assesses part of the syllabus (dividing the syllabus into two parts for reasons of continuous assessment and methodological efficiency), the marks obtained by the students will be published on moodle as partial marks (50%) and at the end of the semester the total mark (50%+ 50%). Requests for appeals or revision of partial test grades will not be accepted. Only requests for an appointment with the teacher to view the test and clarify the marks given for the questions will be accepted.