

CONSTITUTIONAL LAW

Degree in Legal Studies (Solicitors)

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Code: 16703

Main Scientific Area: Public Legal Sciences

Lecturer: Irene Maria Portela

Language of Instruction: Portuguese

Regime: S1

Contact Hours: 60h Total Workload: 108h

ECTS: 6,0

Objectives

This course aims to give students a basic broad knowledge of Portuguese constitutional law. Students will be provided with the core skills needed to understand the main concepts and principles related to Portuguese government functioning and fundamental rights, legal production, and constitutionality control. Students will be led to develop research capabilities and critical sense to solve problems related to the course subject.

Learning Outcomes

Students will be led to master the main concepts and legislation related to Portuguese constitutional law. They should also be able to solve problems about constitutional law, as being capable of:

-Knowing the origin and historical evolution of Portuguese constitutional law;

Knowing the fundamental rights and their legal framework

Knowing the fundamental rights protection legal mechanisms

Knowing the State functions and its organs

Knowing the legal production process Knowing the constitutional control mechanisms

Solve problems and develop case studies about the course subjects

Course Contents

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 decentralisation in the Constitution Chapter

III - Organs of State

1. Organs and related concepts

2. Duties and competences

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 - THE THEORY OF THE CONSTITUTION

I-The Theory of the Constitution: Formation of the Constitution

1. Constituent power

2. Formal constituent power and material constituent power

3. Types of constituent acts

1. Forms and rules of constituent acts
2. Material limits on constituent power

II- Constitutional norms

1. structure of constitutional norms
2. Interpretation, integration and application of constitutional norms
 - a. Interpretation and integration
 - b. Application over time
 - c. Application in space

III- Types of Constitution

1. historical constitutional evolution
2. The 1976 Constitution

PART 3 - 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, defence and rights to benefits
5. Rights of liberty and social rights

III - The Portuguese Constitution and fundamental rights

1. Fundamental rights in the Constitution of the Portuguese Republic
2. Interpretation and integration
3. The dignity of the human person, the Universal Declaration of Human Rights and the Rule of Law

IV - The fundamental rights regime

1. The main constitutional principles
2. Principle of equality
 - a. The principle of equality in Portuguese law
 - b. Positive discrimination measures
3. The principle of proportionality
4. Immediate application of fundamental rights
5. Preservation of essential content
6. Reciprocal limitation of rights
7. Judicial protection of fundamental rights
8. The Ombudsman
3. Reserve of law and the principle of legality
4. The primacy of the Assembly of the Republic
5. The legislative competence of the Government
6. The referendum
7. The parliamentary legislative procedure

PART 4 - 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 program was developed according to the goals set for this course and the skills students are intended to acquire. With that purpose, students will be provided with a program that consists of a broad overview of Portuguese constitutional law and the remaining legislation and judicial verdicts on the matter. The students will also be encouraged to solve cases and to develop group talks, as well as to participate in group sessions, as a way to improve their critical and research skills as well as to consolidate their theoretical knowledge.

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 e-mail (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.