



Syllabus

Academic Year	2021/2022
Program	International Relations
course	Security Law and Constitutional Protection
Term	I semester
Year	2
SSD	IUS/08
Credits	6

INSTRUCTIONAL GOALS

In a famous judgment of the Supreme Court of Israel on investigation methods [Public Committee Against Torture v. Israel, 6 September 1999], Chief Justice Aharon Barak solemnly stated: “This is the destiny of a democracy—it does not see all means as acceptable, and the ways of its enemies are not always open before it. A democracy must sometimes fight with one hand tied behind its back. Even so, a democracy has the upper hand. The rule of law and the liberty of an individual constitute important components in its understanding of security. At the end of the day, they strengthen its spirit and this strength allows it to overcome its difficulties.”

These words perfectly capture the main questions students will be confronted with in this course. Does the need to guarantee the individuals’ and the State’s security justify an exception to the constitutional principles of fundamental rights and the rule of law? Does the fight against serious threats to security require special constitutional rules departing from the ordinary standards? To what extent can a democracy deviate from its fundamental principles to guarantee the security of its citizens? Which means can a constitutional democracy accept in the pursuit of security?

The course aims at providing students with the capacity to critically discuss these questions and to understand the role of constitutional guarantees as important components of a democracy’s understanding of security. Through the examination of the provisions of several Constitutions of the world and of the jurisprudence of various Constitutional Courts, the course focuses on the ability of constitutional law to guide and limit the exercise of public authority in exceptional circumstances, where the security of individuals is under serious threat.

INTENDED LEARNING OUTCOMES

Knowledge and understanding:

By the end of the course, students are expected to:

- be familiar with different approaches to security in comparative constitutional law;
- understand and critically assess security policies issued in different countries from the perspective of constitutional principles;
- be able to detect potential tensions between security-related policies and fundamental rights;
- understand and assess the role of different branches of government in designing responses to security threats.

Applying knowledge and understanding:

The knowledge gained in this course will enrich the students’ understanding of the complexity of security-related issues, enabling them to assess security policies not only from the perspective of their efficiency or through a costs-benefits analysis, but also from the viewpoint of their impact on constitutional principles and values. In their study field, this will give students a more comprehensive understanding of security law and policies. In the professional world, the acquired



knowledge will be particularly helpful in activities such as providing advice or preparing case summaries or notes for State agencies, policy makers, private entities, and NGOs.

Making judgements:

The course enables students to form their own judgment on the constitutional aspects of security-related policies and fosters their ability to argue and give reasons for their opinions in a legally informed and sound way. The comparative approach will require students to discuss different constitutional law approaches to security measures, taking into account a country's historical, social and political background. This will particularly promote their capacity to solve problems in an independent and critical way.

Communications Skills:

Students will be regularly encouraged to actively participate in the discussion of specific security policies examined in the course. They are expected to express their views in appropriate legal terms and particular emphasis will be put on the ability to deal with legal concepts from different jurisdictions. In the second part of the course, students will be asked, personally or in groups depending on the course's attendance, to deliver a presentation on a case study and to introduce a discussion with their fellow students. This is meant to enhance their presentational and communicative skills. The lecturer will provide constant feedback to the students on their communications skills.

Learning skills:

The course will empower students to carry out autonomously the following tasks:

- perform a comprehensive legal analysis of security policies from the constitutional law perspective;
- present in a clear and understandable way advantages and disadvantages of different constitutional arrangements concerning public security;
- outline constitutional law constraints with respect to specific draft policies.

Pre-requisites	Students are expected to be familiar with the basic concepts of Public law, Comparative Public Law, International Law and EU Law.
Course content	<p>At the beginning of the course, students will be guided through an examination of constitutional regulations of state of exceptions (emergencies, warfare, etc.). Students will learn different models of constitutional regulations and situate them in their political and historical context.</p> <p>The course will then focus on four main area of tensions between constitutional principles and the need to counter security threats:</p> <ol style="list-style-type: none">1) The right to privacy;2) The prohibition of inhuman and degrading treatments, and the right to a fair trial;3) Regulation of migration and citizenship;4) Democratic transparency and accountability. <p>For each area, developments in two or more countries of the Western legal tradition will be examined from a comparative perspective. These include a contextual analysis of the legislation adopted in the pursuit of security as well as of constitutional and supranational courts' decisions reviewing the determinations of the political authorities.</p>
Reference Books	<p>At the beginning of the course a list of the course's materials will be delivered. This includes legislation, courts' decisions and scholarly papers.</p> <p>Some readings will be taken from the following books:</p> <ul style="list-style-type: none">- Bruce A. Ackerman, <i>Before the next attack. Preserving civil liberties in an age of terrorism</i>, Yale University Press, 2006;- Benjamin J. Goold and Liora Lazarus (eds.), <i>Security and Human Rights</i>, Hart Publishing, 2nd edition, 2019;- Christophe Paulussen and Martin Scheinin (eds.), <i>Human Dignity and Human Security in Times of Terrorism</i>, Springer, 2019;- Richard A. Posner, <i>Not a Suicide Pact: The Constitution in a Time of National Emergency</i>, Oxford University Press, 2006.



Teaching Methods	Classes consist of both traditional lectures and the presentation and discussion of texts and judgements assigned in advance. Students will be encouraged to actively take part in the course and to contribute to a lively and thought-provoking atmosphere.
Assessment	Assessment consists of an oral examination. Active participation in class will be also taken into account for the final grade.
