

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet: PRIMERJALNO USTAVNO PRAVO
Course title: COMPARATIVE CONSTITUTIONAL LAW

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
Pravo 1. stopnje	Pravo	Prvi	Drugi
Law Undergraduate	Law	First	Second

Vrsta predmeta / Course type

Obvezno/Obligatory

Univerzitetna koda predmeta / University course code:

Predavanja Lectures	Seminar Seminar	Sem. vaje Tutorial	Lab. vaje Laboratory work	Teren. vaje Field work	Samost. delo Individ. work	ECTS
40		35				6

Nosilec predmeta / Lecturer:

Prof. dr. Arne Marjan Mavčič

**Jeziki /
Languages:**

**Predavanja /
Lectures:** Slovensko/Slovenian

Vaje / Tutorial: Slovensko /Slovenian

Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:

- Izpolnjevanje pogojev za vpis v 1. letnik.

Prerequisites:

- Eligibility for enrollment in the first year.

Vsebina:

Content (Syllabus outline):

Predmet omogoča študentom širše in poglobljeno znanje o ustavnih oziroma pravnih sistemih v svetu. Gre za kombinacijo nacionalnega in primerjalnega prava. Kot nadgradnja študija o nacionalnem ustavnem oziroma pravnem sistemu primerjalna metoda seznanja študente z ureditvami drugih držav, izhajajoč iz posebnosti po posameznih svetovnih regijah in upoštevajoč značilne tipe pravnih oziroma ustavnih sistemov.

I. Prvi blok:

Prvi del

Ideja konstitucionalizma (elementi konstitucionalizma, klasični sistemi konstitucionalizma, ustavne reforme – posebej v novih demokracijah)

Drugi del

Sodna in ustavnosodna presoja ustavnosti (judicial and constitutional review), sistemi in modeli.

1. Pojem in razvoj presoje ustavnosti (pojem presoje ustavnosti, razvoj presoje ustavnosti v svetu, opredelitev ustavnega sodstva, pomen sodne presoje ustavnosti, primerjalna ureditev ustavnega sodstva)

2. Sistemi presoje ustavnosti (zunajsodni in sodni sistem, ameriški model, evropski model, mešani model, francoski model, New Commonwealth model, drugi modeli presoje, sistemi

brez sodne presoje ustavnosti)

3. Oblike presoje ustavnosti (preventivna in represivna presoja, konkretna in abstraktna presoja, vrste in pravna narava ustavnosodnih odločitev, federalizem in ustavno sodstvo)

4. Mednarodne povezave organov sodne presoje ustavnosti

II. Drugi blok:

Prvi del

1. Zgodovinsko poreklo ustavnih sistemov

2. Razvoj

3. Materialni pojem pravnega oziroma ustavnega sistema

4. Socialno ekonomski vzroki nastajanja

The course enables students to a broader and deeper knowledge of the constitutional and legal systems in the world. It is a combination of national and comparative law. As an upgrade study of the national constitutional and legal system based on the comparative method, making students familiar with legal systems of other countries, drawing on features for individual world regions and taking into account specific types of legal and constitutional systems.

I First block:

The first part

The idea of constitutionalism (elements of constitutionalism, classical systems of constitutionalism, constitutional reforms - especially in new democracies)

The second part

1st

Judicial and constitutional review of the constitutionality (judicial and constitutional review), systems and models, the concept of assessment of the constitutionality and the development of the constitutional review in the world, the definition of the constitutional judiciary, the importance of judicial review of constitutionality, comparative view on constitutional justice)

2nd

Systems of the constitutional review (extrajudicial and judicial system, the U.S. model, the European model, the mixed model, the French model, the New Commonwealth model, other models of constitutional and judicial review).

3rd

Forms of the constitutional and judicial review (preventive and repressive review, concrete and abstract review, the type and nature of

<p>pravnih sistemov in nastajanja ustavnih sistemov v obliki pisanih ustav</p> <p>5. Posamezne skupine sistemov</p> <p>5.1 Zgodovinska razvrstitev</p> <p>5.2 Geografska razvrstitev in geografski poreklo sistemov</p> <p>5.3 Temeljne značilnosti posameznih sistemov</p> <p>5.3.1 ZDA</p> <p>5.3.2 Velika Britanija</p> <p>5.3.3 Nemčija</p> <p>5.3.4 Švica</p> <p>5.3.5 Nove demokracije</p> <p>5.3.6 Afrika</p> <p>5.3.7 Azija</p> <p>5.3.8 Srednja in Južna Amerika</p> <p>5.3.9 Avstralija</p> <p>6. Metode pri proučevanju sistemov</p> <p>6.1 Pravni pristop</p> <p>6.2 Sociološki pristop</p> <p>6.3 Zgodovinski razvoj: stare in nove primerjalne študije, proces globalizacije, vplivi preobrazbe pravnih sistemov v devetdesetih letih 20. stoletja)</p> <p>7. Vrste sistemov, s posebnim ozirom na strukturo sistema</p> <p>7.1 Pisane in nepisane ustave</p> <p>7.2 Pisane in dokumentarne ustave</p> <p>7.3 Kodificirane in nekodificirane ustave</p> <p>7.4 Čvrste in gibke ustave</p> <p>7.4 Teritorialna organizacija oblasti v državah z unitarno in federativno strukturo</p> <p>8. Kompleksno gledanje na ustavo</p> <p>9. Kršitve ustave, ustavne tranzicije, prevzemanje ustavnih besedil kot vzorcev in transplantacije ustav</p> <p>10. Prelomni trenutki in tranzicija</p> <p>11. Utrjevanje sistema: sodišča in demokracija</p> <p>Drugi del</p> <p>1. Nacionalna pravna oziroma ustavna ureditev in njene sestavine, primerjalne relacije do tujih sistemov</p> <p>2. Posebnosti posameznih tipov ureditev</p> <p>2.1 Materialni vidik (vsebinske posebnosti urejanja posameznih ustavnih institutov v nacionalnih sistemih)</p> <p>2.2 Formalni vidik (posebnosti oblike ustavnih besedil)</p>	<p>constitutional decisions, federalism and the the constitutional justice)</p> <p>4th</p> <p>International associations of bodies of judicial and constitutional review.</p> <p>II. Second block:</p> <p>The first part</p> <p>1st</p> <p>Historical origins of constitutional systems</p> <p>2nd</p> <p>Development</p> <p>3rd</p> <p>Material term of the legal and constitutional system</p> <p>4th</p> <p>Socio-economic causes of the formation of legal systems and the emergence of the constitutional systems in form of a written constitution</p> <p>5th</p> <p>Particular groups of systems</p> <p>5.1 Historical ranking</p> <p>5.2 Geographical classification and geographic origin of the system</p> <p>5.3 Basic features of individual systems</p> <p>5.3.1 U.S.</p> <p>5.3.2 United Kingdom</p> <p>5.3.3 Germany</p> <p>5.3.4 Switzerland</p> <p>5.3.5 New Democracies</p> <p>5.3.6 Africa</p> <p>5.3.7 Asia</p> <p>5.3.8 Central and South America</p> <p>5.3.9 Australia</p> <p>6th Methods for studying systems</p>
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<p>3. Sistem in ustava v formalnem smislu</p> <p>4. Odstopanje od elementov ustave v formalnem smislu</p> <p>5. Viri ustavnega prava</p> <p>5.1 Nacionalni viri</p> <p>5.2 Mednarodni viri</p> <p>5.3 Hierarhija: ustava, ustavni zakon, zakoni in drugi splošni akti, mednarodni dokumenti, sodna praksa, ustavne tradicije in običaji, teorija, splošna pravna načela, morala.</p> <p>6. Oblikovanje ustavnega besedila, koncepti, modeli (Blaustein, www.oefre.unibe.ch/law/icl/index.htm)</p> <p>III. Tretji blok:</p> <p>1. Človekove pravice s primerjalnega vidika</p> <p>2. Nacionalno varstvo.</p> <p>2.1 Formalno varstvo (redno sodstvo, posebno sodstvo, ustavno sodstvo).</p> <p>2.2 Neformalno varstvo (ombudsman, nevladne organizacije itd.)</p> <p>3. Mednarodno varstvo:</p> <p>3.1 Univerzalno varstvo (Organizacija združenih narodov).</p> <p>3.2 Regionalno varstvo (Evropska konvencija o človekovih pravicah, Evropsko sodišče za človekove pravice, Listina o temeljnih pravicah Evropske unije, Interameriško sodišče za človekove pravice; Afriško sodišče za človekove pravice; Mednarodno sodišče za človekove pravice po Daytonskem sporazumu (BiH))</p> <p>4. Vpliv mednarodnega varstva na nacionalno varstvo</p> <p>IV. Četrti blok:</p> <p>1. Primerljivost pravnih oziroma ustavnih sistemov</p> <p>2. Raven primerljivosti pravnih oziroma ustavnih sistemov</p> <p>3. Primerjalne metode:</p> <p>3.1 nižje ravni: empirični opis, zgodovinska razlaga.</p> <p>3.2 višje ravni: tematska primerjava.</p> <p>4. Zgodovinska metoda: Pravni/ustavni sistemi so produkt zgodovine in jih je mogoče razložiti le s številnimi zgodovinskimi faktorji.</p> <p>5. Institucionalna metoda: Pravni/ustavni sistemi so kvalificiran politično pravni pojav.</p> <p>6. Ideološka metoda: Sisteme je mogoče</p>	<p>6.1 The legal approach</p> <p>6.2 The sociological approach</p> <p>6.3 Historical development: old and new comparative studies of the globalization process, the effect of transformation of legal systems in the nineties of the 20th century)</p> <p>7th</p> <p>Types of systems, with particular reference to the structure of the system</p> <p>7.1 Written and unwritten constitution</p> <p>7.2 Colorful and documentary Constitution</p> <p>7.3 Codified and non codified constitution</p> <p>7.4 Firm and flexible constitution</p> <p>7.4 Territorial authorities in the organization of unitary and federal structures</p> <p>8th Complex vision in the Constitution</p> <p>9th Violation of the Constitution, constitutional transition, usage of constitutional texts as models and transplantation of constitutions</p> <p>10th Critical moments and transition</p> <p>11th Hardening system: courts and democracy</p> <p>The second part</p> <p>1st</p> <p>National legal and constitutional system and its components, comparison with foreign systems</p> <p>2nd</p> <p>Specialities of particular systems</p> <p>2.1 Material aspects (contents of regulation of particular constitutional institutions in national systems)</p> <p>2.2 Formal aspects (specific forms of constitutional texts)</p> <p>3rd</p> <p>System and the constitution in the formal sense</p>
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ocenjevati na podlagi bolj ali manj skladnega zbira vrednot in norm.

7. Funkcionalna metoda: Sistemi so eden od številnih pojavov v družbi in so hkrati element sociološko političnega sistema.

8. Strukturalno funkcionalna metoda: Kot drugi pojavi, so sistemi eden od determinant strukture družbe in hkrati je tudi struktura ena od determinant sistemov.

9. Sistemska metoda: se ukvarja s problemi političnih in pravnih relacij v okviru konkretnih sistemov.

4th

Deviation of elements of the constitution in the formal sense

5th Sources of Constitutional Law

5.1 The National Resources

5.2 International sources

5.3 Hierarchy: constitution constitutional law, laws and other general acts, international documents, jurisprudence, constitutional traditions and practices, theory, general principles of morality.

6th

The creation of a constitutional text, concepts, models (Blaustein, [www.oefre.unibe.ch / law / ICL / index.html](http://www.oefre.unibe.ch/law/ICL/index.html)).

Third block

1st Human rights from a comparative perspective

2nd National protection.

2.1 Formal protection (ordinary judiciary, special judiciary, constitutional justice).

2.2 Informal protection (Ombudsman, NGOs, etc.).

3rd International Protection:

3.1 Universal protection (United Nations).

3.2 Regional Protection (European Convention on Human Rights, European Court of Human Rights, the Charter of Fundamental Rights of the European Union, the Inter-American Court of Human Rights, the African Court on Human Rights, the International Court of Human Rights based on the Dayton Agreement (BiH)

4th Impact on the international protection of national protection

Fourth block:

1st Comparability of legal and constitutional systems

	<p>2nd Level of comparability of legal and constitutional systems</p> <p>3rd Comparative method: 3.1 lower levels: an empirical description of historical explanation. 3.2 higher level: a thematic comparison.</p> <p>4th Historical Method: The legal / constitutional systems are a product of history and can be only be explained by a number of historical factors.</p> <p>5th Institutional Method: The legal / constitutional political systems are qualified legal phenomenon.</p> <p>6th Ideological method: The systems can be evaluated on the basis of more or less coherent collection values and norms.</p> <p>7th Functional Method: Systems are one of many phenomena in society and at the same time elements of the socio political system.</p> <p>8th Structurally functional method: Like other phenomena, the systems are one of the determinants of the society structure and at the same time also the structure is one of the determinants of the systems.</p> <p>9th Systemic method: dealing with the problems of political and legal relations in the context of particulare systems.</p>
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Temeljni literatura in viri / Readings:

Mavčič, Arne, Primerjalno ustavno pravo – pravo človekovih pravic, založba Pasadena, Ljubljana, 2002

Blanpain, Roger, International encyclopaedia of laws, Constitutional law, The Hague, London, Boston, Kluwer Law International (suppl.)

Blaustein, Albert P., Framing the Modern Constitution: A Checklist, A Philadelphia Constitution Foundation Book, Rothman and Co., Littleton, Colorado 80127, 1994

Blaustein, Albert P. /Sigler Jay A., Constitutions That Made History, Paragon House Publishers, New York, 1988

Bulletin on Constitutional Case-Law, Special Editions, 94-, Secretariat of the Venice Commission/Council of Europe, Strasbourg

Internet:
www.us-rs.si s povezavami
www.concourts.net s povezavami
www.lib.Uchicago.edu/~llou/conlaw.html

Zbirka ustav/Collection of Constitutions:
ICL (www.oefre.unibe.ch/law/icl/index.html)
<http://confinder.richmond.edu/confinder.html>

Cilji in kompetence:

Študenti bodo razvili splošne kompetence: znanje o ustavnih oziroma pravnih sistemih v svetu.

Objectives and competences:

Students will develop general competencies: knowledge of the constitutional and legal systems in world.

Predvideni študijski rezultati:

Znanje in razumevanje:

- Obveznost sodelovanja na predavanjih in vajah.
- Predstavitev v naprej predpisanih primerov, ki vpliva na končno oceno izpita.
- Neobvezni kolokvij pred izpitom, bodisi esejskega tipa ali take home, namenjen samo-preverjanju znanja

Opraviti pisni izpit, sestavljen iz teoretičnega in praktičnega dela.

Intended learning outcomes:

Knowledge and understanding:

- Compulsory participation in class discussions.
- Introduction to the statutory examples that impact on the final assessment exam.
- An optional exam before the exam or essay type or the take home, for self-examination

A written exam consisting of theoretical and practical part.

Metode poučevanja in učenja:

Predavanja temeljijo na prikazu materije s sodobnimi računalniško podprtimi vizualnimi sredstvi.

Vaje: primerjava strukture Ustave RS s strukturami tujih ustav (www.concourts.net; www.oefre.unibe.ch/law/icl/index.html); primerjava odločitve v postopku ustavne pritožbe Ustavnega sodišča Slovenije (www.us-rs.si) s sorodno odločitvijo tujega ustavnega sodišča in Evropskega sodišča

Learning and teaching methods:

Lectures are based on the representation of matter with modern computer-based visual means.

Tutorial: Comparing the structure of the Constitution with the structures of foreign constitutions (www.concourts.net; www.oefre.unibe.ch/law/ICL/index.html), a comparison of the decision in the proceedings of the constitutional complaint before the

za človekove pravice (www.echr.coe.int)

Constitutional Court of Slovenia (www.us-rs.si)
with a related decision from particular foreign
constitutional courts and the European Court for
Human Rights (www.echr.coe.int)

Delež (v %) /

Načini ocenjevanja:

Weight (in %) **Assessment:**

Način (pisni izpit, ustno izpraševanje, naloge, projekt) Pisni izpit 70% Naloge 30%		Type (examination, oral, coursework, project): Examination 70% Coursework 30%
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Reference nosilca / Lecturer's references:

Dostopno na/available on: <http://www.concourts.net/author.php>