

First week:

Right to strike v. right to economic activity: striking the balance in a globalized socio-liberal Europe ?

Dr. **Luigi Malferrari**, Ph. D., LL.M., formerly clerk, Court of Justice of the European Communities, Luxembourg ; at present Legal Officer, European Commission, Brussels

Tutor: Dr. Valentina Beghini, Research Associate, University of Trento

Monday July 27th / Tuesday July 28th

The tension between the right to collective action (right to strike) and the right to free economic activity is inherent. The aim of the seminar is to investigate how the tension between the former and the latter right is solved in the different European countries, to see how the balancing approach (or "praktische Konkordanz" as the German constitutional doctrine calls it) is structured and to identify possible trends. In particular, the following questions should be addressed: May the right to collective action be used to oppose the transfer of an undertaking or part of it to a different region/country? May the right to collective action be used to oppose the (temporary or permanent) arrival of an undertaking from another region/country? May a strike preclude the provision of a raw material necessary for the production or an essential facility (eg access to the electricity network)? Does the right to collective action include the solidarity strike? If so, is it lawful that the workers of an essential facility provider prevent their employer from supplying an undertaking against which other workers are on strike? May the right to collective action impede completely an economic activity? What are the standards/tests used to adjudicate these cases? Can an individual's right such as the right to free economic activity be raised against another private person to limit the latter's individual rights such as the right to strike (Drittwirkung or horizontal binding effects)? If this is the case, under which conditions?

Social rights

Prof. **Constance Grewe** , Professor of Constitutional Law, Université Robert Schuman, Strasbourg and Judge of the Constitutional Court of Bosnia-Herzegovina.

Tutor: Samuel Marchesseau, Doctoral Student, Université Robert Schumann, Strasbourg.

Thursday July 30th / Friday July 31st

Social rights are construed by scholars who intend to distinguish several generations of rights as a category of constitutional rights in opposition to civil and political rights. It is not clear if and to which extent the European constitutions have received this concept as a specific legal category neither if a uniform concept of social rights can be observed in Europe . The seminar aims at conducting a survey analysis of constitutional texts and of constitutional adjudication on the subject in order to verify these assumptions and to show the various judicial involvements with social rights.

Second week:

The "dialogue of judges" and the mutual influence of constitutional concepts in Europe : How the interpretation of national fundamental rights is influenced by the fundamental rights of the ECHR and the EC general principles as well as by a horizontal exchange of ideas of national constitutional courts.

Prof. **Rainer Arnold**, Professor of Law, Public Law and European Law at the Faculty of Law of the University of Regensburg

Tutor: Anna Magdalena Maciejczyk

Monday August 3rd / Tuesday August 4th

Modern constitutionalism centres on the protection of the individual against excessive state intervention and society interference. Fundamental Rights are expression of the national culture. But the individual of

today is no longer a mere „national“ of a State but is exposed to other sources of law from outside, from the international and supranational level. The ECHR functions as an additional guarantee to the national protection and as a control mechanism on the national solutions. The EC/EU fundamental rights, judge-made general principles of law and since 2000 formulated in a Charter, not yet in force but very influential, are relevant for the individual in the field of integrated matters. The multiplicity of protection levels in Europe has led to a mutual influence what has in part „europeanized“ the national concepts. A dialogue of judges furthers the comparative perspective and contributes to a growing convergence in this respect.

Vertical and horizontal influences in the field of Fundamental Rights protection turn the national into European solutions.

States of emergency and fundamental rights

Prof. **Roberto Toniatti**, Professor of Comparative Constitutional Law, University of Trento
in substitution for

Prof. Franc Grad, Professor of Constitutional Law, University of Ljubljana and Judge of the Constitutional Court of Slovenia

Tutor: Dr. Mattia Magrassi, University of Trento

Thursday August 6th / Friday August 7th

In situations affecting *ordre public* and national security (and also economic stability), the Constitution often expressly allows for stricter regulation and even for the suspension of the exercise of fundamental rights, although mainly with the safeguard of the essential contents of it. The protection afforded by the ECHR may also be suspended (art. 15). With regard to the evaluation of the factual premises performed by the political branches of government as well as to the contents of such restrictive regulation, constitutional adjudication plays the delicate and crucial role of balancing both conflicting societal and individual goods. The seminar will explore the reasoning of Constitutional Courts both in acknowledging the existence of a critical contingent situation (when applicable) and in protecting some yet meaningful scope of fundamental rights.

Guest Speakers:

Eleanor Sharpston, First Advocate General at the Court of Justice of the European Communities, Luxembourg

Elena Ioriatti, University of Trento